

EXHIBIT 5

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 SAN JOSE DIVISION 4 MONTEREY BAY MILITARY) HOUSING, LLC, CLARK) 5 PINNACLE MONTEREY BAY,) LLC, CLARK MONTEREY) 6 PRESIDIO, LLC, CALIFORNIA) MILITARY COMMUNITIES,) 7 LLC, CLARK PINNACLE) CALIFORNIA MILITARY) 8 COMMUNITIES, LLC and) CLARK IRWIN, LLC,) 9 Plaintiffs,) Case No. vs.) 5:14-CV-03953-BLF-HRL 10 PINNACLE MONTEREY, LLC,) PINNACLE IRWIN, LLC,) 11 AMERICAN MANAGEMENT) SERVICES CALIFORNIA, INC.,) 12 AMERICAN MANAGEMENT) SERVICES, LLC, GOODMAN) 13 REAL ESTATE, INC.,) GOODMAN FINANCIAL) 14 SERVICES, INC., STANLEY) HARRELSON and JOHN) 15 GOODMAN,) Defendants.) 16) 17 AND RELATED) CROSS-COMPLAINTS) 18) 19 The video deposition of LOUIS DUDNEY, called for examination pursuant to the Rules of 20 Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Shannon R. Roberts, a notary public within and for the County of Will and State of 21 Illinois, at 77 West Wacker Drive, Suite 3100, Chicago, Illinois, on June 16, 2015, at the hour 22 of 9:04 a.m. 23 Reported by: Shannon R. Roberts, CSR 24 License No.: 084-004669</p>	<p>1 ALSO PRESENT: 2 MR. ANDREW MATHEWS, 3 Associate General Counsel, 4 Compliance Officer for Military Projects, 5 Pinnacle Family of Companies 6 7 MR. THOMAS F. GRISTINA, 8 Page Scrantom Sprouse Tucker Ford, P.C., 9 American Management Services and American 10 Management Services East 11 12 MS. KIM ORTIZ, Videographer 13 14 15 16 17 18 19 20 21 22 23 24</p>
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<p>1 APPEARANCES: 2 KIRKLAND & ELLIS, LLP 3 BY: MS. DONNA M. WELCH 4 300 North LaSalle Street 5 Chicago, Illinois 60654 6 (312) 862-2257 7 donna.welch@kirkland.com 8 Representing the Plaintiffs; 9 10 GREENBERG TRAURIG, LLP 11 BY: MR. THOMAS E. DUTTON 12 77 West Wacker Drive, Suite 3100 13 Chicago, Illinois 60601 14 (312) 456-8400 15 dutton@gtlaw.com 16 Representing AMS, AMS California, 17 Stan Harrelson, Pinnacle Monterey 18 and Pinnacle Irwin. 19 20 21 22 23 24</p>	<p>1 I N D E X 2 WITNESS EXAMINATION 3 LOUIS DUDNEY 4 BY MR. DUTTON 6 5 6 E X H I B I T S 7 NUMBER MARKED FOR ID 8 DUDNEY Deposition Exhibit 9 No. 001 9 10 No. 002 58 11 Nos. 003-004 113 12 Nos. 005-006 119 13 No. 007 153 14 No. 008 150 15 No. 009 184 16 No. 010 199 17 No. 011 210 18 No. 012 224 19 No. 013 256 20 No. 014 267 21 No. 015 274 22 No. 016 278 23 No. 018 282 24 (Dudney Exhibit No. 017 omitted)</p>

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<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: This is Tape No. 1 of the 2 videotaped deposition of Louis Dudney in the 3 matter of Monterey Bay Military Housing, LLC, 4 et al., versus Pinnacle Monterey, LLC, et al., 5 being heard before the U.S. District Court for 6 the Northern District of California, San Jose 7 Division, Case No. 5:14-CV-03953-BLF-HRL. 8 This deposition is being held at 9 Greenberg Traurig, 77 West Wacker Drive, 10 Suite 3100, Chicago, Illinois, on Tuesday, 11 June 16, 2015, at 9:04 a.m. 12 My name is Kim Ortiz and I am the 13 videographer. The court reporter is Shannon 14 Roberts. 15 Counsel, will you please introduce 16 yourselves and affiliations and the witness will 17 be sworn in. 18 MR. DUTTON: Tom Dutton on behalf of American 19 Management Services, American Management 20 Services California, Pinnacle Monterey and 21 Pinnacle Irwin, and Stan Harrelson. 22 MR. MATHEWS: Andy Mathews from American 23 Management Services. 24 MR. GRISTINA: Thomas Gristina of Page</p>	<p style="text-align: right;">Page 7</p> <p>1 A. I don't have the -- an exact figure for 2 what it is. 3 Q. Over a million dollars? 4 A. I'm sorry? 5 Q. Over a million dollars? 6 A. Yes. 7 Q. Over \$2 million? 8 A. Are you asking for just this particular 9 case or are you including the Benning and 10 Belvoir? 11 Q. Well, let me ask just for this 12 particular case. 13 A. Okay. And your question was if it's 14 over \$2 million? 15 Q. Yeah. 16 A. It likely is. 17 Q. How long have you been working on the 18 California case? 19 A. For some time. You deposed me a couple 20 of years ago in it, so my first affidavit that 21 I've got here I think is from 2012, so it's a 22 number of years that I've been working on it. 23 Q. And were you involved in work at the 24 Fort Irwin and Monterey projects before 2012?</p>
<p style="text-align: right;">Page 6</p> <p>1 Scrantom on behalf of American Management 2 Services and American Management Services East. 3 MS. WELCH: Donna Welch with Kirkland & Ellis 4 for the plaintiffs. 5 THE REPORTER: Shannon Roberts, court 6 reporter from Esquire. 7 (WHEREUPON, the witness was duly 8 sworn.) 9 LOUIS DUDNEY, 10 having been first duly sworn, was examined and 11 testified as follows: 12 EXAMINATION 13 BY MR. DUTTON: 14 Q. Good morning, Mr. Dudney. How are you? 15 A. Good morning, Mr. Dutton. I'm fine, 16 thanks. 17 Q. You understand that you're here today 18 to testify in the matter of Monterey Bay 19 Military Housing versus Pinnacle Monterey, 20 et al.? 21 A. Yes. 22 Q. And to date, for the engagement with 23 AlixPartners, how much have the projects spent 24 on your firm?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. I might have been. I don't recall the 2 first time that I went out there because 3 I visited both locations, so I -- I can't recall 4 what the exact -- but it certainly was prior to 5 my issuing the various, you know, my first 6 affidavit or other report in the matter. 7 Q. Has your firm AlixPartners been 8 involved in work at the Monterey and Fort Irwin 9 projects prior to 2012? 10 A. Again, subject to check, but I -- my 11 best recollection would be yes. 12 Q. And has AlixPartners billed the 13 projects and have the projects paid AlixPartners 14 over \$3 million for your work on the California 15 case? 16 A. Again, I don't know what the billings 17 are. I would have to refer to the bills to 18 determine whether it's over \$3 million, it could 19 be, but I don't -- I don't recall. 20 Q. And isn't it correct that you were 21 being paid directly by the two military housing 22 projects that are the plaintiffs in this case? 23 A. I'm not sure I can testify precisely as 24 to where the payments come from. I do know that</p>

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<p style="text-align: right;">Page 9</p> <p>1 I send the bills to representatives of the owner 2 along with Kirkland & Ellis, but I -- I don't 3 know that I've ever seen a check or a wire 4 transfer to see where the payments actually come 5 from. 6 Q. It's your understanding, isn't it, that 7 you're being paid -- AlixPartners is being paid 8 out of the project money? 9 A. That's my understanding. 10 Q. Clark Realty Capital is not paying 11 AlixPartners' bills in this case, right? 12 A. Not to my knowledge. 13 Q. You prepared an expert report dated 14 March 27th, 2015, have you not? 15 A. Yes. 16 Q. And that report, I'll mark as Dudney 17 Exhibit 001. 18 (WHEREUPON, DUDNEY Deposition 19 Exhibit No. 001 was marked for 20 identification.) 21 BY MR. DUTTON: 22 Q. And Mr. Dudney, I've just marked the 23 body of the report, I haven't marked the 24 exhibits. I have the exhibits to the report</p>	<p style="text-align: right;">Page 11</p> <p>1 action, correct? 2 A. Correct. It is a -- it is -- just to 3 be specific, it is my December 31st, 2013 report 4 in the Georgia matter. 5 Q. All right. Now, Mr. Dudney, when did 6 you begin working on the -- what I'll call the 7 first 95 pages which is the California report? 8 A. Are you asking me about when was the 9 words actually started to be put down in the 10 form that they are in, or are you asking 11 substantively in terms of doing the analysis 12 that ultimately manifests themselves in the 13 report? 14 Q. When did you start to work on the 15 report? 16 A. Physically the report itself. 17 Q. Do you understand the question? 18 A. I'm trying to understand the 19 differentiation I asked about. 20 Q. All right. Well, why don't you tell me 21 when you -- when you began the report and then 22 when we talk about the analyses, I can ask you 23 when you started those analyses. 24 A. Sure. I don't -- I don't recall when</p>
<p style="text-align: right;">Page 10</p> <p>1 separated out, and I thought I could refer to 2 them as we go. I understand you brought your 3 own copy of that report today; is that right? 4 A. Yes, and I would point out that what 5 you have handed me -- and I'll flip the pages 6 here to check on, make sure we've got it all 7 copied, but it appears to have some exhibits to 8 it, so for example, it's got Exhibit 1 which is 9 my CV that was current at the time, it has 10 Exhibit 2 which is a December 31st, 2013, report 11 from Benning and Belvoir, and I think that's it. 12 Whereas, there are -- as you can see, 13 there are many other exhibits. It's got -- it 14 appears to have the first two exhibits and then 15 let me just check -- 16 Q. All right. 17 A. -- to make sure we're complete here. 18 So yes, the text pages, which go from 1 19 to 95 appear to be complete and appear to be 20 that March 27th report and then as I mentioned 21 up front, it appears to have Exhibit 1 and 2 but 22 not the other exhibits. 23 Q. All right. And Exhibit 1 is your CV 24 and Exhibit 2 is your report in the Georgia</p>	<p style="text-align: right;">Page 12</p> <p>1 the first time was, it was obviously in the 2 early part of the spring, late winter period of 3 this year that I began working on what is 4 culminated in the March 27th report here as 5 Exhibit 001. 6 Q. So the first quarter of 2015, would 7 that be accurate? 8 A. That's my best recollection as to when 9 the report started to be drafted. 10 Q. Okay. Now your -- your report contains 11 a summary that has four basic opinions; is that 12 correct? 13 A. Yes. 14 Q. And the first four -- the first opinion 15 involves identified deficiencies and processes 16 and improprieties and other issues -- and/or 17 other issues arising from Pinnacle's management 18 services at the Monterey and CMC projects? 19 A. Yes. 20 Q. What do you mean by identified 21 deficiencies and processes? 22 A. One example would be the internal 23 control deficiencies that are noted in my 24 report.</p>

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<p style="text-align: right;">Page 13</p> <p>1 Q. Right. But what do you mean by 2 deficiencies and processes? 3 A. It was just a term to identify that 4 there were, for example, in the case of the 5 internal control deficiencies, that that's a 6 typical term that would be used when assessing 7 internal controls, whether they are deficient or 8 lacking from what the state that an entity would 9 prefer them to be in. 10 Q. Well, okay. So who is -- who is the 11 judge of whether or not the controls are 12 deficient? 13 MS. WELCH: Objection, form. 14 THE WITNESS: It depends on, you know, what 15 circumstance we're talking about, but in this 16 case, for purposes of the internal controls, 17 these were documents that I analyzed which were 18 based on contemporaneous assessments that were 19 made as part of the relationships that existed, 20 so I believe in -- in the case of the ones that 21 I'm referring to, these were auditors that were 22 affiliated or associated with the owner in some 23 form that was doing reviews of what the property 24 manager's controls looked like.</p>	<p style="text-align: right;">Page 15</p> <p>1 question was with respect to Fort Irwin? 2 Q. Yes. 3 A. I reference at least two times when 4 they did which was September 2007 and 5 December 2009. Those are the dates of the 6 internal control reviews, not to suggest that 7 those are the only ones, but those are the two 8 at least that I've noted for purposes of my 9 report so I would point to those, at least, they 10 did it twice, but there may be other ones, I 11 didn't attempt to catalog them all. 12 Q. Are you aware of a review that was done 13 in 2005 by a consulting firm that had been hired 14 by the owner to conduct a review? 15 A. I'd have to look back. Obviously, 16 there is a large volume of documents that have 17 been produced, so I don't -- I can't recall the 18 document on its face as I sit here today, but 19 that's not to say that I haven't seen it at some 20 point. 21 Q. Are you aware that Navigant Consulting, 22 a national consulting firm, was hired by Clark 23 Realty Capital to conduct a review of the 24 internal controls at Fort Irwin, of the property</p>
<p style="text-align: right;">Page 14</p> <p>1 BY MR. DUTTON: 2 Q. So who reviewed -- who was responsible 3 for reviewing the internal controls that AMS had 4 at Pinnacle -- or sorry, at Irwin and Monterey? 5 MS. WELCH: Objection to form. 6 THE WITNESS: Well, I don't know that I can 7 state who is responsible for it other than to 8 say that I -- my understanding is that it was 9 done by representatives of the owner and that 10 the individuals were affiliated with Clark 11 Realty Capital in some shape -- way, shape or 12 form. 13 BY MR. DUTTON: 14 Q. How many times did Clark Realty Capital 15 on behalf of the owner review the internal 16 controls that existed at Fort Irwin with respect 17 to property management? 18 A. I don't know without going back through 19 the production that I can testify as to how many 20 times specifically they did. I could point to 21 -- because I included, I believe, just either by 22 footnote or I may have some copies, let me just 23 check. 24 And I'm sorry, Mr. Dutton, your</p>	<p style="text-align: right;">Page 16</p> <p>1 manager at Fort Irwin? 2 A. I don't know that again without going 3 back to the document that I could confirm it one 4 way or the other, if that took place. I just 5 don't recall. 6 Q. When -- well, you represent the owner. 7 You're testifying on behalf of the owner in this 8 case, right? 9 A. I'm retained on behalf of the owner, 10 that's correct. 11 Q. And I take it that part of your job is 12 to ask the owner for documents that represent 13 their reviews of Pinnacle's internal controls at 14 Fort Irwin? 15 MS. WELCH: Objection to form. 16 THE WITNESS: Part of my job certainly is to 17 gather information and review information that 18 is produced in the litigation. We make various 19 requests and obviously, we go through counsel 20 and then they talk with, you know, the various 21 parties and the documents are then provided 22 depending on what's appropriate for production 23 given the rules, you know, that are taking place 24 in the litigation, so certainly, having said</p>

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<p style="text-align: right;">Page 17</p> <p>1 that, the issue around internal controls and the</p> <p>2 reviews of those was one of the categories of</p> <p>3 documents that we had inquired about.</p> <p>4 BY MR. DUTTON:</p> <p>5 Q. And did you ask the owner or counsel</p> <p>6 for the -- any internal control reviews that had</p> <p>7 been done at Fort Irwin?</p> <p>8 A. My best recollection is that broadly</p> <p>9 speaking, yes. I don't know that we made</p> <p>10 specific identification of individual ones that</p> <p>11 we may have become aware about -- aware of, I</p> <p>12 think we were just generally interested and it</p> <p>13 was known that we were interested in looking at</p> <p>14 internal control reviews.</p> <p>15 Q. Were you trying to be thorough and look</p> <p>16 at all internal control reviews?</p> <p>17 A. Yes.</p> <p>18 Q. Is there any reason why you wouldn't</p> <p>19 want to review the Navigant internal control</p> <p>20 review from 2005?</p> <p>21 A. No.</p> <p>22 Q. Are you aware of any reason why that</p> <p>23 wouldn't have been provided to you as part of</p> <p>24 your work in this case?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. To the extent that they're produced.</p> <p>2 Q. Well, you are aware that they were</p> <p>3 requested by counsel to be produced, right?</p> <p>4 A. Again, just broadly, Mr. Dutton, I'm</p> <p>5 aware that those -- there were requests made for</p> <p>6 those types of documents because that's</p> <p>7 something that, you know, we were familiar with</p> <p>8 as a concept prior to starting the Monterey case</p> <p>9 and so we were interested in seeing those</p> <p>10 things.</p> <p>11 Q. In your efforts to be thorough and look</p> <p>12 at all of the reviews of internal controls of</p> <p>13 the property manager, did you undertake to</p> <p>14 review the internal controls that had been done</p> <p>15 by Pinnacle's accounting staff out of Florida?</p> <p>16 A. Yes. If they were produced.</p> <p>17 Q. And if you had reviewed them and cited</p> <p>18 them for any purpose, they would be cited in</p> <p>19 your report, right?</p> <p>20 A. Yes, if I cited them, of course, they</p> <p>21 would be cited, that is correct.</p> <p>22 Q. Well, if you reviewed them and</p> <p>23 considered them, they would be in your report,</p> <p>24 right?</p>
<p style="text-align: right;">Page 18</p> <p>1 A. I couldn't testify to that one way or</p> <p>2 the other.</p> <p>3 Q. What was the -- did you look at any</p> <p>4 other internal control reviews that had been</p> <p>5 done?</p> <p>6 A. Again, I don't know that I have a</p> <p>7 listing of all of them so I -- I attempted to in</p> <p>8 working with my team to look at all of the ones</p> <p>9 that were produced. I then noted the ones that</p> <p>10 I, you know, quoted in the report, so there may</p> <p>11 be other ones but I'd have to go back through</p> <p>12 the production to refresh my recollection to</p> <p>13 determine whether there are, in fact, additional</p> <p>14 ones beyond those that are cited.</p> <p>15 Q. During the course of this litigation,</p> <p>16 you've become aware that Pinnacle had an</p> <p>17 accounting, if you will, an accounting group</p> <p>18 located in Maitland, Florida?</p> <p>19 A. Yes, I'm aware of that.</p> <p>20 Q. And you became aware that that</p> <p>21 accounting group also looked at the internal</p> <p>22 controls at Fort Irwin from time to time?</p> <p>23 A. I believe that's correct.</p> <p>24 Q. Have you seen those reports?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. If I reviewed and considered them, they</p> <p>2 would be listed -- it's not included on Dudney</p> <p>3 Exhibit 001, but it is included there, I believe</p> <p>4 it's Exhibit 14, has a listing of all the</p> <p>5 documents that have been made available to us.</p> <p>6 Q. Did you take the Pinnacle internal</p> <p>7 control reviews into consideration when reaching</p> <p>8 your conclusions in this case about the</p> <p>9 deficiencies and processes?</p> <p>10 A. Again, to the extent that they were</p> <p>11 produced, I and my team would have endeavored to</p> <p>12 review them and consider them in those lights, I</p> <p>13 can't specifically recall as I sit here today to</p> <p>14 what extent those documents were -- were</p> <p>15 produced.</p> <p>16 Q. Are you aware of any other entities</p> <p>17 that from time to time reviewed the internal</p> <p>18 controls of the property manager at Fort Irwin?</p> <p>19 A. I don't know to what extent the Army</p> <p>20 may have as part of their interfacing with</p> <p>21 operations at Fort Irwin. Again, I would have</p> <p>22 to go back and look at the documents produced to</p> <p>23 refresh my recollection on that.</p> <p>24 Q. You are aware that the Army had</p>

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<p style="text-align: right;">Page 21</p> <p>1 representatives located at Fort Irwin, correct?</p> <p>2 A. Well, obviously, it's a military base</p> <p>3 and so there's a number of people there. When</p> <p>4 you say representatives, do you mean, for</p> <p>5 example, of RCI or something like that? Is that</p> <p>6 what you're referring to?</p> <p>7 Q. Yes.</p> <p>8 A. Yes, it's my understanding that there</p> <p>9 were individuals there and that's just from my</p> <p>10 having been there, I recall maybe being briefly</p> <p>11 introduced to one or something when I was there.</p> <p>12 Q. And you understand that the</p> <p>13 responsibility -- that the RCI personnel that</p> <p>14 were on site at Fort Irwin had oversight</p> <p>15 responsibility with respect to the property</p> <p>16 manager?</p> <p>17 MS. WELCH: Objection, form.</p> <p>18 BY MR. DUTTON:</p> <p>19 Q. Among other things?</p> <p>20 A. Speaking without -- as to what that</p> <p>21 entity's legal duties might have been and</p> <p>22 whether the contracts and various relationships</p> <p>23 exist, having said that, as a practical matter</p> <p>24 I understand that RCI had some responsibility or</p>	<p style="text-align: right;">Page 23</p> <p>1 Monterey, and so I would have -- I would</p> <p>2 anticipate that to the extent that those</p> <p>3 documents were made available, they would fall</p> <p>4 under that category in my view.</p> <p>5 Q. You are aware also, are you not, that</p> <p>6 the Department of the Army from time to time did</p> <p>7 operations review for the -- on behalf of -- or</p> <p>8 of the property management activities at Fort</p> <p>9 Irwin?</p> <p>10 A. Very broadly. Again, not -- I have an</p> <p>11 understanding that there is -- again, as part of</p> <p>12 whether it's RCI or more broadly the Department</p> <p>13 of the Army, that there were, you know, various</p> <p>14 reviews that were done.</p> <p>15 Q. You are aware, aren't you, Mr. Dudney,</p> <p>16 that the deputy assistant secretary of the Army</p> <p>17 and the -- I'll just say the chief of staff of</p> <p>18 the Army, both have parallel authority with</p> <p>19 respect to military housing operations at Fort</p> <p>20 Irwin?</p> <p>21 A. I can't speak to the military</p> <p>22 hierarchal authority structure with respect to</p> <p>23 Irwin knows and just very broadly, knowing that</p> <p>24 RCI and the Department of the Army as I</p>
<p style="text-align: right;">Page 22</p> <p>1 level of oversight and responsibility for, you</p> <p>2 know, the conduct of the -- and provision of</p> <p>3 military housing for the soldiers.</p> <p>4 Q. In your assessment of the internal</p> <p>5 controls of the property manager at Fort Irwin,</p> <p>6 did you consult with or review any documents or</p> <p>7 interview any personnel from the RCI?</p> <p>8 A. I haven't interviewed anyone from RCI</p> <p>9 that I recall and again, if the documents were</p> <p>10 produced with respect to those issues and made</p> <p>11 available to us as part of our general request</p> <p>12 in this area, then we would have -- my team and</p> <p>13 I would have reviewed them.</p> <p>14 Q. Did you request any documents from the</p> <p>15 RCI or did you ask counsel to request any</p> <p>16 documents from the RCI concerning their</p> <p>17 oversight role at Fort Irwin?</p> <p>18 A. The only -- I don't recall a specific</p> <p>19 request that would exactly match the way you</p> <p>20 phrased your question. The way I recall it more</p> <p>21 was that we had a request that we had put out in</p> <p>22 conversations with counsel about an interest in</p> <p>23 obtaining reviews of the processes and so forth</p> <p>24 of the provision of housing at Irwin and</p>	<p style="text-align: right;">Page 24</p> <p>1 understand it have ultimate control of those</p> <p>2 facilities, but I can't speak any more broad --</p> <p>3 any more specifically than that.</p> <p>4 Q. And you are aware that the deputy</p> <p>5 assistant secretary of the Army and the chief of</p> <p>6 staff's -- the Army chief of staff's office had</p> <p>7 retained a real estate consultant, Jones Lang</p> <p>8 LaSalle, to -- that performed services for the</p> <p>9 deputy assistant secretary of the Army and the</p> <p>10 chief of staff's office?</p> <p>11 A. I am aware that Jones Lang LaSalle was</p> <p>12 retained. I don't know that I could</p> <p>13 specifically cite the entities that you just</p> <p>14 articulated as being the entities that retained</p> <p>15 them, but I am aware that they were retained in</p> <p>16 respect to the provision of military housing and</p> <p>17 providing various services to the Army in that</p> <p>18 regard.</p> <p>19 Q. And you are aware that the -- from time</p> <p>20 to time, Jones Lang LaSalle on behalf of the</p> <p>21 deputy assistant secretary of the Army and chief</p> <p>22 -- Army chief of staff conducted reviews of</p> <p>23 operations at Fort Irwin, correct?</p> <p>24 A. I believe that's correct. Again,</p>

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<p style="text-align: right;">Page 25</p> <p>1 subject to check in the production of the</p> <p>2 documents, but I've definitely seen and reviewed</p> <p>3 Jones Lang LaSalle documents with respect to</p> <p>4 this matter.</p> <p>5 Q. Now, Mr. Dudney, you are aware of how</p> <p>6 the projects -- the Fort Irwin projects were</p> <p>7 financed, correct?</p> <p>8 A. Generally speaking.</p> <p>9 Q. Okay. What's your understanding of how</p> <p>10 the Fort Irwin project was financed?</p> <p>11 A. The -- the articulation that I can give</p> <p>12 is that as I understand it, there is a, you</p> <p>13 know, a series of entities that were formed in</p> <p>14 partnership with the Army to provide -- I'll</p> <p>15 call it ownership and management, to provide</p> <p>16 ownership as well as management demarcations</p> <p>17 between the various entities that were involved</p> <p>18 and that as I understand it, part of the</p> <p>19 financing of the military facilities and the</p> <p>20 reconstruction has to do with the securitization</p> <p>21 of the income flow that comes out of the housing</p> <p>22 with respect to bonds that were then floated in</p> <p>23 that regard, and that there is a drawdown</p> <p>24 mechanism by where -- under which the properties</p>	<p style="text-align: right;">Page 27</p> <p>1 a securitization, and it would be something else</p> <p>2 but it's nonetheless the credit -- paying</p> <p>3 ability of the owner is linked to the provision</p> <p>4 of housing which is linked then to the</p> <p>5 individual tenants or the soldiers paying</p> <p>6 monthly rents, et cetera, and that some portion</p> <p>7 of that floats back up to compensate the bond</p> <p>8 holders with interest payments.</p> <p>9 Q. Well, you understand that the rents or</p> <p>10 the income from the project doesn't go to the</p> <p>11 property manager.</p> <p>12 A. I'm not sure I understand your</p> <p>13 question.</p> <p>14 Q. Well, when -- when the soldiers and the</p> <p>15 families that live at Fort Irwin pay rent, where</p> <p>16 do they pay it?</p> <p>17 A. I don't know that I could testify as to</p> <p>18 where they physically pay it. It might differ</p> <p>19 by tenant, I'm not sure.</p> <p>20 Q. Where does the money go, Mr. Dudney?</p> <p>21 A. I'm not sure I'm understanding your</p> <p>22 question. Go in what sense?</p> <p>23 Q. Do they pay the money to Pinnacle, the</p> <p>24 property manager?</p>
<p style="text-align: right;">Page 26</p> <p>1 on a periodic basis draw down funds or make</p> <p>2 requests for the provision of funds to meet</p> <p>3 various budgets, et cetera, and so that's my</p> <p>4 general understanding of it.</p> <p>5 Q. So basically, the owner entities took</p> <p>6 out a loan, right?</p> <p>7 A. A bond is a form of a loan.</p> <p>8 Q. Okay. And it was a fairly large loan?</p> <p>9 A. I don't know the amount, but I think it</p> <p>10 is.</p> <p>11 Q. Three, \$400 million?</p> <p>12 A. I don't -- I just don't know the</p> <p>13 amount.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah.</p> <p>16 Q. And the loan is secured by the income</p> <p>17 from the project?</p> <p>18 A. There is some -- I -- I recall being</p> <p>19 told at one point many years ago now at this</p> <p>20 point, that there was some -- and whether it's</p> <p>21 actually structured as a securitization which is</p> <p>22 a specific type of loan indenture and agreement</p> <p>23 in structure or whether it is structurally</p> <p>24 different than what people would typically view</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I'm not sure I can testify as to</p> <p>2 physically where it goes. There are a series of</p> <p>3 accounts as I understand it, and I don't know</p> <p>4 how the payment process -- I can't testify as to</p> <p>5 how the payment process works from a tenant into</p> <p>6 the various accounts that are then, you know,</p> <p>7 capture that money and how it's then disbursed</p> <p>8 with respect to meeting the budgets at a</p> <p>9 particular site.</p> <p>10 Q. What's a lockbox account, Mr. Dudney?</p> <p>11 A. A lockbox account is an account most</p> <p>12 typically at a bank, where -- oftentimes used in</p> <p>13 real estate transactions, a tenant will mail</p> <p>14 their check to a particular lockbox and then</p> <p>15 that's a service that a bank provides to</p> <p>16 essentially open the mail, deposit the checks</p> <p>17 and report back on, you know, who has paid and</p> <p>18 so forth, and so that's what a lockbox is very</p> <p>19 generally.</p> <p>20 Q. And why would a lender, particularly in</p> <p>21 a large real estate transaction like the one</p> <p>22 that led to the formation of California military</p> <p>23 communities, why would a lender want a lockbox</p> <p>24 account?</p>

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<p style="text-align: right;">Page 29</p> <p>1 MS. WELCH: Objection, foundation.</p> <p>2 THE WITNESS: A lender, as a general matter,</p> <p>3 I can't speak to the specific one in this regard</p> <p>4 but as a general matter, a lender typically will</p> <p>5 ask for a lockbox because it's viewed as</p> <p>6 providing them with enhanced control with</p> <p>7 respect to the funds, and ultimately, it</p> <p>8 decreases the risk that they take as a lender.</p> <p>9 BY MR. DUTTON:</p> <p>10 Q. Now what's your understanding then of</p> <p>11 how the property manager at Pinnacle, at Fort</p> <p>12 Irwin, obtains funds to use in its operations?</p> <p>13 A. I believe that they submit a -- a</p> <p>14 budget of some sort that then has to be reviewed</p> <p>15 and -- but I believe that that's generally how</p> <p>16 it works, that they submit budgets and then</p> <p>17 subsequent -- subsequently incur actual expenses</p> <p>18 working under a particular budget, but there is</p> <p>19 a process around that, that I understand, is the</p> <p>20 way that generally the project is funded</p> <p>21 including expenses that are incurred by the</p> <p>22 manager.</p> <p>23 Q. Well, for each -- for each year, do you</p> <p>24 understand that there is a budget that is</p>	<p style="text-align: right;">Page 31</p> <p>1 understanding is that the Army also gets to see</p> <p>2 those budgets.</p> <p>3 Q. And don't you understand that the Army</p> <p>4 actually has a process called a major decision</p> <p>5 process that it follows during the course of</p> <p>6 budget reviews and approvals?</p> <p>7 A. I've heard the term but it wasn't part</p> <p>8 of the sort of scope of my analysis so again,</p> <p>9 I'm familiar with it, more from the periphery.</p> <p>10 Q. And every year, the operations budget</p> <p>11 and the capital expenditures budget at Fort</p> <p>12 Irwin was reviewed and approved in a major</p> <p>13 decision process by the Army?</p> <p>14 A. I can't testify specifically to that</p> <p>15 because it wasn't part of the scope of the</p> <p>16 analysis that I did, but that's my understanding</p> <p>17 is that there were a series of approvals, I</p> <p>18 can't speak to individual years and if there was</p> <p>19 ever something that happened that was different</p> <p>20 than that generalized description.</p> <p>21 Q. And you understand that the owner also</p> <p>22 had an asset manager at Fort Irwin, right?</p> <p>23 A. Yes, there is an asset manager as I</p> <p>24 understand it.</p>
<p style="text-align: right;">Page 30</p> <p>1 prepared by the property manager?</p> <p>2 A. I believe that's correct, yes.</p> <p>3 Q. And do you understand that there are</p> <p>4 essentially two main budgets that the property</p> <p>5 manager prepares, an operations budget and then</p> <p>6 a capital expenditure budget?</p> <p>7 A. Yes.</p> <p>8 Q. And those budgets are submitted to the</p> <p>9 owner?</p> <p>10 A. That's my understanding.</p> <p>11 Q. And those budgets are approved by the</p> <p>12 owner, right?</p> <p>13 A. Well, they're reviewed and either</p> <p>14 approved or something else happens to them, but</p> <p>15 generally speaking, I think that the owner has</p> <p>16 approval authority, if I understand it, with</p> <p>17 respect to the various budgets.</p> <p>18 Q. And those -- those budgets were also</p> <p>19 submitted to the Army?</p> <p>20 A. Again, it's not something that I</p> <p>21 specifically analyzed that submission, but</p> <p>22 that's my general understanding is that the Army</p> <p>23 sees those. How and what the submission process</p> <p>24 is and how formal, that I can't speak to, but my</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And the asset manager is an entity</p> <p>2 affiliated with Clark Realty Capital?</p> <p>3 A. That is my understanding.</p> <p>4 Q. You understand that, you know, on many</p> <p>5 occasions, the asset manager and the owner were</p> <p>6 one and the same?</p> <p>7 MS. WELCH: Objection to form.</p> <p>8 THE WITNESS: I'm not sure what you mean by</p> <p>9 when you say one and the same.</p> <p>10 BY MR. DUTTON:</p> <p>11 Q. The same person functioned as the owner</p> <p>12 and the asset manager?</p> <p>13 A. Oh, it may or may not be. I don't --</p> <p>14 again, not something that I attempted to analyze</p> <p>15 as to whether or not that occurred.</p> <p>16 Q. You didn't look at the budget approval</p> <p>17 process?</p> <p>18 A. I haven't done a specific analysis of</p> <p>19 the budget approval process.</p> <p>20 Q. You didn't look at the process for</p> <p>21 approving either the capital expenditure budget</p> <p>22 or the operations budget?</p> <p>23 A. No. Other than just as a general,</p> <p>24 again, the context of the work that we were</p>

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<p style="text-align: right;">Page 33</p> <p>1 doing but there wasn't a specific analysis that</p> <p>2 was done in that regard.</p> <p>3 Q. Now, what's your understanding of how</p> <p>4 Pinnacle at Fort Irwin got money for the</p> <p>5 operations budget -- or from -- sorry, let me</p> <p>6 ask a better question.</p> <p>7 What's your understanding of how</p> <p>8 Pinnacle got money to fund its operations at</p> <p>9 Fort Irwin?</p> <p>10 A. Through the process that we've been</p> <p>11 discussing, that there was a budget that was</p> <p>12 prepared and that funding was then provided</p> <p>13 based on that and whatever process took place,</p> <p>14 that was one part of it, and then there was a</p> <p>15 separate part as I understand it, which was the</p> <p>16 submission by Pinnacle, for example, of metrics</p> <p>17 and other data with respect to its performance</p> <p>18 during the year by then which payments would be</p> <p>19 evaluated and made if appropriate with respect</p> <p>20 to incentives or other aspects of how they got</p> <p>21 compensated for doing their work.</p> <p>22 Q. I'm not talking about -- I'm not</p> <p>23 talking about that -- I'm talking about the</p> <p>24 budget for operations and how Pinnacle's</p>	<p style="text-align: right;">Page 35</p> <p>1 operations budget and the capital expenditures</p> <p>2 budget?</p> <p>3 A. I -- I can't testify as to if there</p> <p>4 were differences necessarily between the two</p> <p>5 other than the fact that obviously, the nature</p> <p>6 of the expenditures are different because of the</p> <p>7 different types of budgets, but as to the</p> <p>8 process, that wasn't something that I undertook</p> <p>9 an analysis of.</p> <p>10 Q. Was -- so you -- you haven't done any</p> <p>11 analysis of whether Pinnacle's operations were</p> <p>12 over budget or under budget at Fort Irwin?</p> <p>13 A. I don't recall that I have put together</p> <p>14 a specific analysis, Mr. Dutton, that would show</p> <p>15 that. There may be, in the work papers that</p> <p>16 we've produced, some data around that, but</p> <p>17 there's not an opinion, so it may be that we've</p> <p>18 got, as part of the work that we've done, just a</p> <p>19 factual comparison of when we pulled that</p> <p>20 information together, ultimately though, that</p> <p>21 wasn't a specific analysis that rose to the</p> <p>22 level of inclusion in my report and therefore a</p> <p>23 specific opinion with respect to that.</p> <p>24 Q. Now, are you aware that if at the end</p>
<p style="text-align: right;">Page 34</p> <p>1 operations budget was funded, okay?</p> <p>2 A. Uh-huh.</p> <p>3 Q. So let's try to stick with that. What</p> <p>4 was the process as far as you know?</p> <p>5 A. Again, just the process that we've been</p> <p>6 discussing that they prepared a budget and that</p> <p>7 there was then -- there was funding that was</p> <p>8 provided on a periodic basis based on the budget</p> <p>9 as well as where actual expenses were coming</p> <p>10 out, and that that was a process that engaged,</p> <p>11 as I understand it, Pinnacle, the owner, and</p> <p>12 possibly at times, the asset manager.</p> <p>13 Q. Okay. And where would Pinnacle submit</p> <p>14 its request for operations funding?</p> <p>15 A. I don't know where they make their</p> <p>16 specific request to or who they make it to.</p> <p>17 Q. And when as far as -- would Pinnacle's</p> <p>18 -- would Pinnacle's operations be funded in</p> <p>19 advance of the monthly expenditures for</p> <p>20 operations?</p> <p>21 A. I'd have to go back and check. I think</p> <p>22 the answer is that they're -- that they're</p> <p>23 funded up front, but I'd have to check that.</p> <p>24 Q. Now, was the process the same for the</p>	<p style="text-align: right;">Page 36</p> <p>1 of a given budgetary period, the property</p> <p>2 manager was under budget, the property manager</p> <p>3 would then have excess funds in its operations</p> <p>4 account. Are you aware of that?</p> <p>5 A. Again, I didn't do an analysis as to,</p> <p>6 you know, whether it actually did or didn't, but</p> <p>7 conceptually, what you are describing to me</p> <p>8 doesn't seem unreasonable, that if they -- if</p> <p>9 they were funded ahead of time, for example, or</p> <p>10 even for setting aside funding one way or the</p> <p>11 other, just taking the budget whether it was</p> <p>12 actually funded or not for a particular period,</p> <p>13 and if actual expenses are less than the budget,</p> <p>14 then there would be excess funds in the budget</p> <p>15 regardless of whether it was funded or not.</p> <p>16 Q. And are you aware that at the end of</p> <p>17 this budgetary period or this fiscal period</p> <p>18 depending on -- or maybe at the end of a</p> <p>19 calendar period, that there would be a</p> <p>20 reconciliation or a true-up whereby if Pinnacle</p> <p>21 was under budget, Pinnacle would give money back</p> <p>22 to the owner?</p> <p>23 A. I understand that, and this is more</p> <p>24 broadly, I don't know that my understanding is</p>

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<p style="text-align: right;">Page 37</p> <p>1 per se with Irwin, but it's just more broad as 2 part of the work that I've been doing in these 3 related cases for the last few years, that -- 4 I understand that there is a true-up process 5 that has generally taken place, I can't specify 6 or testify specifically to what occurred 7 historically with Irwin in that regard. 8 Q. And have you -- have you made any 9 effort to reconcile the various flow funds in 10 the true-ups that have occurred at Fort Irwin 11 for the period March 1, 2004, through I guess 12 the present? 13 A. Again, I -- I'd need to check back in 14 the work papers that I have to see if there is a 15 factual, although mathematical recitation of 16 that, that we may have done just as part of the 17 sort of basic work that we engage in to 18 understand some of the issues, but ultimately, 19 even if we have that, and I'd have to check 20 that, that's not something that I ultimately 21 rendered an opinion on and nor was it included 22 in the report that is Dudney Exhibit 001. 23 Q. Now, you understand, don't you, that 24 the property management agreement between</p>	<p style="text-align: right;">Page 39</p> <p>1 fidelity -- typically, what's a fidelity 2 insurance provision for? 3 A. I'm not sure I can testify about it. 4 Q. You don't know? 5 A. I don't know that I've -- that I can 6 testify about it one way or the other, so no, I 7 don't have specific knowledge of it with that 8 terminology. 9 Q. Are you aware that in the event of 10 theft of funds, for example, Pinnacle was 11 required to have insurance for the benefit of 12 the owner? 13 A. I can't testify about the requirements 14 of the PMA with respect to that. 15 Q. And you can't testify about -- as to 16 why that provision would be inserted into the 17 contract? 18 A. Certainly not the specifics of this 19 contract, I mean, I've certainly seen other 20 situations where there are, for example, 21 bondings that are done with surety bonds or 22 other types of bonds to, you know, protect an 23 institution or whatever the -- whoever the 24 insured is from different acts that might occur</p>
<p style="text-align: right;">Page 38</p> <p>1 Pinnacle and the owner allows the owner to have 2 audit rights? 3 THE WITNESS: I'm sorry. I got distracted 4 for a second. Can I ask to have the question 5 read back, please? 6 (WHEREUPON, the record was read 7 by the reporter as requested.) 8 THE WITNESS: Yes. 9 BY MR. DUTTON: 10 Q. And you understand also that the 11 property management agreement between the owner 12 and the auditor requires that Pinnacle obtain 13 fidelity insurance or -- I think that's what 14 it's called, fidelity insurance on behalf of its 15 employees? 16 MS. WELCH: Objection to form. 17 THE WITNESS: I'm not -- I don't know that I 18 can testify about the insurance. I just don't 19 have a recollection if there is an insurance 20 provision with respect to fidelity insurance in 21 the PMA. I'd have to -- I'd have to go back and 22 look at the document itself. 23 BY MR. DUTTON: 24 Q. You didn't -- you didn't look at the</p>	<p style="text-align: right;">Page 40</p> <p>1 by an employee, so I'm generally familiar with 2 the concept, I'm just not familiar with the term 3 fidelity insurance. 4 Q. Well, you know what a fidelity bond is? 5 A. Not -- I can't testify about it with 6 any more specificity or differentiate, for 7 example, from a surety bond and to what extent 8 those differ. It's just not something I've 9 undertaken as part of this work. 10 Q. Would deficiencies in internal controls 11 be a default under the property management 12 agreement, Mr. Dudney? 13 MS. WELCH: Objection, form, calls for a 14 legal conclusion. 15 THE WITNESS: I can't testify to that one way 16 or the other. I think that's a legal judgment. 17 BY MR. DUTTON: 18 Q. Are you aware of any provision in the 19 property management agreement that required 20 Pinnacle to have internal controls at Fort Irwin 21 that were not deficient? 22 MS. WELCH: Same objection. 23 THE WITNESS: Yeah, again, I don't think I 24 can testify what the property management</p>

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<p style="text-align: right;">Page 41</p> <p>1 agreement does or does not require with respect 2 to internal controls. 3 BY MR. DUTTON: 4 Q. I don't think that was my question. I 5 think my question was: Are you aware of any 6 provision in the property management agreement 7 where Pinnacle agreed to have a certain level of 8 internal controls? 9 A. So just to make sure I understand your 10 question, you're not asking me the 11 interpretation aspect of it, you're just saying 12 am I aware of any provision in there, could I 13 put my finger on it and point to it that would 14 arguably require that. Is that the question? 15 Without going back through the PMA, I 16 can't think of one but again, I didn't look at 17 the PMA in that respect because that wasn't -- 18 wasn't part of the work that I did. 19 Q. Is your understanding -- is it your 20 understanding in this case that Pinnacle is 21 being sued for poor internal controls? 22 A. I don't think that's the -- I think 23 there is a broader set of allegations that 24 relate to the internal control environment is my</p>	<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: Yeah, again, with sort of the 2 same proviso as earlier, and not rendering any 3 legal conclusion with it, I'd have to go back 4 and look at the PMA. There's not a paragraph in 5 my mind's eye that I would point to and readily 6 direct you to that would have that exact 7 language but that, you know, I haven't reviewed 8 it with that in mind, certainly anytime 9 recently. 10 BY MR. DUTTON: 11 Q. Now you call what you do with respect 12 to internal controls, making observations about 13 internal controls, right? 14 A. Yes. I have made certain observations 15 in my report as a result of reviewing those 16 documents. 17 Q. And -- okay. And in making those 18 observations, you cite to the property 19 management agreement, right? 20 Let's start at the beginning, No. 1, 21 internal control deficiencies. 22 A. Yes. 23 Q. A, lack of control over vendor 24 selection/bidding.</p>
<p style="text-align: right;">Page 42</p> <p>1 understanding, but I think the allegations are 2 more specific with respect to, you know, a 3 number of different issues including, you know, 4 work order manipulation, et cetera. 5 Q. So my question was: Is it your 6 understanding in this case that Pinnacle is 7 being sued for poor internal controls? 8 A. Yeah, I don't know that there is a 9 specific claim in one of the -- in one of the 10 complaints, I'd have to go back and look at them 11 that says that one of the counts of action is a 12 failure to maintain internal controls at some 13 prescribed level, but my point with my -- is 14 simply that that -- I understand that those 15 internal controls though in the plaintiff's mind 16 relate to the environment that existed with 17 respect to the allegations at large that are 18 being made. 19 Q. All right. And is it your 20 understanding that -- or are you aware of any 21 provisions in the property management agreement 22 that make lack of internal controls a default? 23 MS. WELCH: Objection, calls for a legal 24 conclusion.</p>	<p style="text-align: right;">Page 44</p> <p>1 Do you see that? 2 A. Correct. 3 Q. And the -- the first thing that you do 4 is you quote the property management agreement, 5 right? 6 A. Yes, it provided context for me because 7 as you know, I -- I looked at that now years ago 8 and before I went out and interviewed some of 9 the folks at Monterey and CMC, with respect to 10 trying to understand the bid environment out 11 there, so yes, I do cite to the PMA there. 12 Q. Okay. And you -- the provision of the 13 property management agreement that you cite 14 states an owner may request written bids for any 15 expenditures over \$10,000, right? 16 A. Correct. 17 Q. Manager is required to submit a minimum 18 of three written bids for all expenditures over 19 \$25,000, right? 20 A. Yes. 21 Q. So one is -- one is an optional request 22 that the owner may make depending on whether or 23 not the owner wants to see all the bids for 24 expenditures up to \$10,000, right?</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. That's the way I would interpret it.</p> <p>2 Q. And if it's over 25, then the manager</p> <p>3 is required to submit a bid, right, or minimum</p> <p>4 bids?</p> <p>5 A. Minimum of three written bids, that's</p> <p>6 my understanding of it.</p> <p>7 Q. And what if the manager doesn't?</p> <p>8 What's your understanding of what happens then?</p> <p>9 A. It failed to meet the -- this provision</p> <p>10 of the PMA.</p> <p>11 Q. And what are the owner's options if</p> <p>12 that's the case?</p> <p>13 MS. WELCH: Objection, calls for a legal</p> <p>14 conclusion.</p> <p>15 THE WITNESS: Yeah, I don't know that I can</p> <p>16 testify as to what their options are, other than</p> <p>17 I suppose continue to ask them for the bids, but</p> <p>18 I don't -- that's not something I specifically</p> <p>19 analyzed.</p> <p>20 BY MR. DUTTON:</p> <p>21 Q. Are you aware of whether the manager</p> <p>22 was able to obtain three bids for all of the</p> <p>23 contracts or expenditures over \$25,000 at the</p> <p>24 Fort Irwin project?</p>	<p style="text-align: right;">Page 47</p> <p>1 reserved to itself all rights and remedies that</p> <p>2 were available to it under the law for equity?</p> <p>3 MS. WELCH: Objection, calls for a legal</p> <p>4 conclusion.</p> <p>5 THE WITNESS: Yeah, I don't know that I could</p> <p>6 testify about that one way or the other what</p> <p>7 their rights and remedies are.</p> <p>8 BY MR. DUTTON:</p> <p>9 Q. I didn't ask you what their rights and</p> <p>10 remedies are. Are you aware that there is a</p> <p>11 provision in the property management agreement</p> <p>12 where the owner reserves to itself all rights</p> <p>13 and remedies under the law of California in the</p> <p>14 event of a failure to live up to the terms of</p> <p>15 the contract?</p> <p>16 MS. WELCH: Objection, form.</p> <p>17 THE WITNESS: Without suggesting by my answer</p> <p>18 that it reflects any interpretation from a legal</p> <p>19 perspective, I think the answer is yes, that</p> <p>20 there is a provision that talks about that</p> <p>21 issue, I'd have to go back and look to be more</p> <p>22 specific, but as a general matter, I think there</p> <p>23 is a provision that is conceptually similar to</p> <p>24 what your question was.</p>
<p style="text-align: right;">Page 46</p> <p>1 A. I know that they were not.</p> <p>2 Q. Okay. And are you aware or did you</p> <p>3 look for actions taken by the owner or the</p> <p>4 owner's asset manager in response to defining</p> <p>5 that there were not three written bids?</p> <p>6 A. Only to the extent that it was part of</p> <p>7 the overall effort that we undertook to look for</p> <p>8 bids, so we engaged in a process where we tried</p> <p>9 to scour the production to identify bids and to</p> <p>10 then -- as you know, I had the opportunity to</p> <p>11 interview people that worked for the manager at</p> <p>12 Fort Irwin for example and at Monterey, and so</p> <p>13 I -- I interviewed a number of folks around the</p> <p>14 bidding to understand that from their</p> <p>15 perspective as well, so what the owner could do</p> <p>16 may be part of the information that I gathered</p> <p>17 as part of that review, would be reflected in</p> <p>18 the various notes and things, but I didn't do a</p> <p>19 separate analysis, for example, to analyze the</p> <p>20 actions the owner did and didn't take in each of</p> <p>21 these regards. I was simply looking at whether</p> <p>22 or not bids had been obtained or not.</p> <p>23 Q. Are you -- are you aware that under the</p> <p>24 property manager agreement, the owner had</p>	<p style="text-align: right;">Page 48</p> <p>1 BY MR. DUTTON:</p> <p>2 Q. Now, I think -- I think in your report</p> <p>3 -- you would agree, based on your report, that</p> <p>4 at the outset of the project, for the first year</p> <p>5 of operations at Fort Irwin, Pinnacle entered</p> <p>6 into a series of contracts with a vendor called</p> <p>7 Mainscape.</p> <p>8 A. Correct.</p> <p>9 Q. And those contracts were for an</p> <p>10 expenditure of funds that was greater than</p> <p>11 \$25,000?</p> <p>12 A. Correct.</p> <p>13 Q. And that meant that -- that three bids</p> <p>14 would be required, right?</p> <p>15 A. That's my understanding.</p> <p>16 Q. And I -- I believe it's your testimony</p> <p>17 that Pinnacle didn't get three bids?</p> <p>18 A. No.</p> <p>19 Q. No?</p> <p>20 A. Not with respect to Mainscape, if</p> <p>21 that's what you're asking me.</p> <p>22 Q. So you are agreeing with me that</p> <p>23 Pinnacle did not get three bids with respect to</p> <p>24 the Mainscape contracts?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A. No. I think we are somehow talking 2 past each other. You asked me generally, did 3 they always -- if I understood your earlier 4 question, did they always get bids for amounts 5 over \$25,000 and the answer is no, they did not 6 always get it. There were times when they did 7 get it. 8 So for example, with respect to 9 Mainscape specifically, and I have a schedule in 10 my work papers that would show you this, my 11 recollection though is that for the first 12 contract that was -- the first longer term 13 contract that was engaged, I believe that there 14 is a -- there were a series of bids around that 15 particular contracting effort. 16 Q. So with respect to the Mainscape 17 contracts, and I think there are three of them 18 that you focus on later on in your report, those 19 were five-year contracts and there were a 20 minimum of three bids for those contracts? 21 A. For the initiation of -- again, I'd 22 have to look to see if it's for all three 23 contracts, but certainly for at least one of the 24 Mainscape contracts, there were multiple bids in</p>	<p style="text-align: right;">Page 51</p> <p>1 for those types of costs. 2 Q. Well, you do something on Pages 54 3 through 60 -- 4 A. Yes. 5 Q. -- of your report, that's called -- 6 actually, I think it starts on 55, something 7 called a Mainscape analysis. 8 Do you see that? 9 A. Correct. 10 Q. And the Mainscape analysis focuses on 11 three contracts: Contract landscaping, contract 12 trash and contract cleaning, right? 13 A. Yes. 14 Q. And I take it that those were five year 15 -- each five-year contracts? 16 A. Trash was. Landscaping, I believe was. 17 And I think turns as well. I'd have to check 18 that one, but I think that's right. 19 Q. Let's call it contract cleaning, so we 20 can keep our terminology straight. That's the 21 term -- terminology you use on Page 58. 22 A. Happy to do that. Happy to do that. 23 Q. And if you look on Page 58, the period 24 of time that you have is from July 1, 2005,</p>
<p style="text-align: right;">Page 50</p> <p>1 the initiation of it, so it wasn't obviously in 2 Years 2, 3, 4 and 5, there weren't bids, but at 3 the outset of it, there were at least three bids 4 if my recollection is serving me correctly. 5 Q. Right. But those were five-year 6 contracts. Is there a requirement that -- to 7 rebid and get a minimum three bids every year if 8 you have a five-year contract? 9 A. I don't know that there's a 10 requirement. I'm just simply pointing out that 11 there wasn't any bids other than the ones that 12 initiated the contract. 13 Q. Wouldn't the expected -- wouldn't the 14 expected cost of the landscape or the garbage or 15 the painting contract be included in the budget 16 for every year? 17 A. I -- I think if I understand your 18 question correctly is that, yes, included in the 19 budget, there are provisions for landscaping and 20 -- I don't know that painting is broken out, but 21 as part of turns and cleaning and decorating 22 that there are funds that are expected to be 23 incurred with respect to that, so yes, I think 24 that there would be provisions within the budget</p>	<p style="text-align: right;">Page 52</p> <p>1 through November 30th, 2005, right? 2 A. I'm sorry, what portion of 58 are you 3 looking at? You're in contract cleaning? 4 Q. Under contract cleaning. 5 A. Let me just read that section really 6 quickly here. 7 Q. 2009 -- did I say -- okay. 8 A. Okay. And if I could have the last 9 question read back to me. 10 Q. Well, I've been informed by my 11 colleagues that I misstated the date in my 12 question. 13 A. Okay. 14 Q. Your report states that Mainscape was 15 the contract cleaning vendor from July 1st, 16 2005, through November 30th, 2009, right? 17 A. Yes. 18 Q. All right. Your report states that 19 Mainscape was the contract landscaping vendor 20 from March 1, 2004, through March 30 -- sorry, 21 December 31st, 2008? 22 A. For landscaping, that's correct. 23 Q. Okay. And for trash, again the dates 24 are March 1, 2004, through December 1 -- 31,</p>

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<p style="text-align: right;">Page 53</p> <p>1 2008, right?</p> <p>2 A. Yes.</p> <p>3 Q. And contract landscaping and contract</p> <p>4 trash were both five-year contracts from the</p> <p>5 outset, right?</p> <p>6 A. That's my understanding.</p> <p>7 Q. And is it your testimony that for</p> <p>8 contract landscaping and contract trash,</p> <p>9 Pinnacle did get three -- a minimum of three</p> <p>10 bids before hiring Mainscape to be the trash</p> <p>11 vendor and the landscaping vendor?</p> <p>12 A. Yeah, let me just look at -- I just</p> <p>13 want to look at one thing real quick.</p> <p>14 Subject to -- to check of the summary</p> <p>15 that I prepared of the bids, the answer is yes,</p> <p>16 I believe that there were -- there were more</p> <p>17 than -- there were at least three bids with</p> <p>18 respect to the retention of Mainscape. The</p> <p>19 thing that I -- I would want to just</p> <p>20 double-check on was to see if that related to</p> <p>21 both trash and landscaping, but my recollection</p> <p>22 is that it does, but that's subject to check</p> <p>23 with the work paper that would show specifically</p> <p>24 that, but there were at the onset -- and what I</p>	<p style="text-align: right;">Page 55</p> <p>1 contract trash removal that Pinnacle would</p> <p>2 submit to the owner, to the asset manager and to</p> <p>3 the Army for approval?</p> <p>4 A. That's my general understanding, yes.</p> <p>5 Q. And Pinnacle would be funded for those</p> <p>6 operations according to the budget that was</p> <p>7 approved, right?</p> <p>8 A. I think -- the general answer is yes,</p> <p>9 the -- it's my understanding again is that it's</p> <p>10 based on the budget that's approved as well as</p> <p>11 the true-up discussion or the true-up function</p> <p>12 that we talked about earlier.</p> <p>13 Q. With respect to the hiring and</p> <p>14 budgetary approval process, with respect to each</p> <p>15 of the contracts that were agreed to between</p> <p>16 Pinnacle and Mainscape, have you identified any</p> <p>17 area where Pinnacle did not comply with the</p> <p>18 provisions of the property management agreement?</p> <p>19 MS. WELCH: Objection to form, calls for a</p> <p>20 legal conclusion.</p> <p>21 THE WITNESS: Yeah, let me have -- let me ask</p> <p>22 to have that one read back. That was kind of a</p> <p>23 long one.</p> <p>24</p>
<p style="text-align: right;">Page 54</p> <p>1 was referencing back here was -- just to</p> <p>2 double-check, it's from my June 5 report in</p> <p>3 Footnote 55 on Page 25 of that report, there is</p> <p>4 a part of a discussion around that so I just</p> <p>5 wanted to refresh on that, but that's my general</p> <p>6 understanding is that there were three for these</p> <p>7 initial five-year contracts.</p> <p>8 Q. Okay. And I take it -- I take it that</p> <p>9 the agreement between Pinnacle and Mainscape for</p> <p>10 trash and landscaping actually occurred sometime</p> <p>11 prior to March 1, 2004, right?</p> <p>12 A. I'd have to go back and look at it but</p> <p>13 I think that's a fair conclusion to draw.</p> <p>14 Q. And based on -- based on that contract,</p> <p>15 Pinnacle included expected costs for landscaping</p> <p>16 and trash removal in its budget for 2004.</p> <p>17 A. I don't know that I could testify</p> <p>18 exactly what was in Pinnacle's mind, but that</p> <p>19 would be my expectation is that it would -- in</p> <p>20 some way reflect the fact that there was a</p> <p>21 contract that had been entered into.</p> <p>22 Q. And then in 2005 and 2006 and 2007 and</p> <p>23 2008, each of the subsequent years, there would</p> <p>24 be a budget for contract landscaping and</p>	<p style="text-align: right;">Page 56</p> <p>1 (WHEREUPON, the record was read</p> <p>2 by the reporter as requested.)</p> <p>3 THE WITNESS: I -- I didn't do a specific</p> <p>4 analysis to see if Pinnacle, with respect to</p> <p>5 Mainscape individually, because I looked more</p> <p>6 broadly at all the various contracts. Again, my</p> <p>7 best recollection subject to check with the</p> <p>8 summary that we've prepared is that for trash</p> <p>9 and landscaping, that the initial five-year</p> <p>10 contracts had three bids or more. The contract</p> <p>11 cleaning and decorating, I would need to go back</p> <p>12 and look to refresh on whether or not that has</p> <p>13 in that or not, but I think it -- the answer is</p> <p>14 that for the first two, landscaping and trash,</p> <p>15 that there are, in fact, three bids which would</p> <p>16 be again, based on my understanding, which would</p> <p>17 be consistent with what the terms of the PMA</p> <p>18 would require.</p> <p>19 Whenever it's a good time, by the way,</p> <p>20 for a break, I'm going to stretch my legs.</p> <p>21 BY MR. DUTTON:</p> <p>22 Q. All right. Well, let's try to finish</p> <p>23 up with contract cleaning --</p> <p>24 A. Sure.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q. -- since that's the third main contract 2 between Pinnacle and Mainscape. 3 A. Sure. 4 Q. Is it your understanding that with 5 respect to hiring Mainscape as the contract 6 cleaning subcontractor, that Pinnacle obtained a 7 minimum of three bids before agreeing to hire 8 Mainscape as the contract cleaner? 9 A. I don't recall. That was sort of the 10 point of my last -- I'm not as sure on the 11 contract cleaning costs without going back to 12 the summary. 13 Q. And where -- where is the summary? Is 14 that Exhibit 9 of your report? 15 A. No. Well, it's -- 16 Q. Can you -- can you tell me which 17 exhibit it's in? 18 A. I don't know that it's an exhibit. It 19 might just be a simply work paper because -- 20 that supports it. It's a -- it's a very 21 particular looking schedule, so I would know 22 what it looks like, so I don't -- it's not 23 Exhibit 9, though. It lists contracts on the 24 left-hand side and time periods across the top.</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Correct. 2 Q. And under contract cleaning, do you see 3 that? 4 A. And you're on Irwin? 5 Q. Yeah. 6 A. Contract cleaning, got it, yep. 7 Q. There's contract cleaning, there's 8 contract refuse and contract yards and 9 maintenance. I suppose that those are the three 10 we've been talking about, just using -- 11 A. Correct. 12 Q. -- different language? 13 A. That's correct. 14 Q. And so for contract cleaning, you have 15 a yes, and then the number of bids located is 16 two, right? 17 A. Correct. 18 Q. For contract reference -- refuse, you 19 have a yes, and the number of bids located is 20 two, right? 21 A. Correct. 22 Q. And then for contract yards and 23 maintenance, the number of bids located, you 24 have yes, and then a seven, right?</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. So you can't -- you don't -- you don't 2 have it in your report, right? 3 A. It's not -- it's not an exhibit to the 4 report, it's part of the work papers that was 5 given to you. 6 Q. How about Exhibit 4? 7 A. Yes. This is the document that I was 8 referring to. 9 Q. Why don't we mark this as Exhibit 002. 10 (WHEREUPON, DUDNEY Deposition 11 Exhibit No. 002 was marked for 12 identification.) 13 BY MR. DUTTON: 14 Q. And I can just hand you a single sheet 15 of paper. Let me show you what I've marked as 16 Exhibit 002, Mr. Dudney, and Exhibit 002 is a 17 two-sided version of Exhibit 4 from your report. 18 A. Correct. 19 Q. I'm sorry for the lack of symmetry in 20 exhibit numbers. 21 A. No problem. 22 Q. But the backside of Exhibit 4 is your 23 bids and contracts inventory summary for the 24 Irwin project, right?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Correct. 2 Q. And each of those were the five-year 3 contracts -- 4 A. I -- I don't think contract cleaning is 5 a five-year contract. I think the -- I think 6 it's refuse and yards and maintenance are. 7 Q. Okay. All right. Are you aware of any 8 notice of default that was provided by the owner 9 to AMS with respect to its retention and 10 contracting with Mainscape? 11 A. I'm not aware of any such notice of 12 default. 13 Q. Are you aware of any discussion of any 14 remedies that the owner would avail itself of 15 with respect to Pinnacle's contracting with 16 Mainscape at Fort Irwin? 17 THE WITNESS: I'm sorry, can I have the 18 question read back, please. 19 (WHEREUPON, the record was read 20 by the reporter as requested.) 21 THE WITNESS: I don't think I can testify 22 that I'm aware of any particular discussions 23 with respect to remedies that they might avail 24 themselves of.</p>

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<p style="text-align: right;">Page 61</p> <p>1 BY MR. DUTTON:</p> <p>2 Q. And are you aware of any allegation</p> <p>3 that has been made with respect to Pinnacle's</p> <p>4 contracting with Mainscape at Fort Irwin that</p> <p>5 Pinnacle was in default under the property</p> <p>6 management agreement?</p> <p>7 A. There are allegations surrounding</p> <p>8 Mainscape and in particular with respect to --</p> <p>9 as I understand it, Mr. Wimer's relationship</p> <p>10 with Mainscape. I -- and so it's in that regard</p> <p>11 that I would understand it, whether or not that</p> <p>12 terminates the PMA, depending on what's proven</p> <p>13 at trial, that, I can't speak to but that's --</p> <p>14 Q. I don't think I asked you that. I</p> <p>15 think I asked you with respect to entering into</p> <p>16 the contracts, are you aware of any allegation</p> <p>17 that's being made with respect to the contracts</p> <p>18 that were entered into between Pinnacle and</p> <p>19 Mainscape that Pinnacle was in default of the</p> <p>20 contracts for not obtaining the minimum number</p> <p>21 of three bids?</p> <p>22 A. Okay. With that last proviso of your</p> <p>23 question, I'm not aware of -- of such -- such</p> <p>24 notice of or -- or allegation of default with</p>	<p style="text-align: right;">Page 63</p> <p>1 A. Okay. Okay.</p> <p>2 Q. And you quote the Monterey PMA and the</p> <p>3 CMC PMA.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then you say throughout --</p> <p>7 throughout various declarations and depositions,</p> <p>8 former and current Pinnacle employees testified</p> <p>9 regarding vendor selection processes that were</p> <p>10 inconsistent with the Monterey and CMC projects,</p> <p>11 and then you have a colon, right?</p> <p>12 A. Yes.</p> <p>13 Q. And then you cite to the testimony of</p> <p>14 four people.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And the first one is Harold Hernandez,</p> <p>18 and he is from the Fort Irwin project, right?</p> <p>19 A. Yes.</p> <p>20 Q. The second one is Jodi George, she's</p> <p>21 from the Fort Irwin project, right?</p> <p>22 A. Correct.</p> <p>23 Q. Third one is Fernando Lopez, and he is</p> <p>24 from the Moffett project?</p>
<p style="text-align: right;">Page 62</p> <p>1 respect to the obtaining the contracts other</p> <p>2 than to say by giving that answer, I'm -- I</p> <p>3 don't want to suggest that I have some opinion</p> <p>4 or conclusion with respect to the plaintiff's</p> <p>5 allegations surrounding Mr. Wimer's relationship</p> <p>6 with -- with Mainscape, because I do understand</p> <p>7 that that's the subject of some of the claims</p> <p>8 and allegations being made by the plaintiffs.</p> <p>9 MR. DUTTON: All right. Let's take a break.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 THE VIDEOGRAPHER: This marks the end of DVD</p> <p>12 No. 1. We are off the record at 10:10 a.m.</p> <p>13 (WHEREUPON, a short break was</p> <p>14 taken.)</p> <p>15 THE VIDEOGRAPHER: Here begins DVD No. 2. We</p> <p>16 are on the record at 10:19 a.m.</p> <p>17 BY MR. DUTTON:</p> <p>18 Q. So Mr. Dudney, we were talking about</p> <p>19 internal control deficiencies, and I asked you</p> <p>20 some questions about that, and then we started</p> <p>21 down to Section 1A --</p> <p>22 A. I'm sorry, what page are you on now?</p> <p>23 Q. -- of Exhibit 002, which is on Page 10</p> <p>24 of your report.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Correct.</p> <p>2 Q. And the last is Stacia Schuster and you</p> <p>3 specifically cite her in her role as investment</p> <p>4 manager at the CMC project, which is Fort Irwin,</p> <p>5 Moffett and Parks, right?</p> <p>6 A. Correct.</p> <p>7 Q. And you don't cite anybody or any</p> <p>8 testimony from anyone at Monterey.</p> <p>9 A. That's correct.</p> <p>10 Q. And in selecting these four</p> <p>11 individuals, despite the fact that you say</p> <p>12 throughout various declarations and depositions,</p> <p>13 former and current Pinnacle employees testified</p> <p>14 regarding vendor selection processes that were</p> <p>15 inconsistent.</p> <p>16 Are these the only four people that you</p> <p>17 could find that testified about vendor selection</p> <p>18 processes that were inconsistent with the</p> <p>19 Monterey and CMC projects?</p> <p>20 A. I don't -- I don't think so. I think</p> <p>21 these were just four that were cited, I'd have</p> <p>22 to go back and look at the testimony or</p> <p>23 declarations to answer your question if these</p> <p>24 were the only four. These were just four that</p>

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<p style="text-align: right;">Page 65</p> <p>1 I thought were important to -- to call out.</p> <p>2 Q. In presenting these four, were you</p> <p>3 trying to give a balanced view of the statements</p> <p>4 that Pinnacle employees, either current and</p> <p>5 former, had made about the vendor selection</p> <p>6 processes at Monterey and CMC?</p> <p>7 A. I wasn't trying to -- the answer is no</p> <p>8 to your question. I wasn't trying to present</p> <p>9 the -- what was supposed to happen, because I've</p> <p>10 described that in -- in A. What I was looking</p> <p>11 for, and this is really as part of the</p> <p>12 investigations or forensic audit aspects of the</p> <p>13 work that I did, that I was looking to see was</p> <p>14 there -- were there indications that there were</p> <p>15 either departures from or things that were</p> <p>16 inconsistent with what I understood to be the</p> <p>17 requirements, and so these were examples that</p> <p>18 I identified.</p> <p>19 Q. Okay. So -- so you were trying to</p> <p>20 identify examples of statements or declarations</p> <p>21 that showed or discussed vendor selection</p> <p>22 processes that were inconsistent with the PMAs?</p> <p>23 A. Inconsistent with the -- and I think</p> <p>24 that term inconsistent with the -- it should say</p>	<p style="text-align: right;">Page 67</p> <p>1 the bidding process was supposed to work and so</p> <p>2 -- or did work in some cases, and in some of</p> <p>3 these, identifying that three bids weren't</p> <p>4 always obtained, and so I sought to determine</p> <p>5 whether from a data perspective, I could</p> <p>6 identify whether or not bids were obtained and</p> <p>7 that's what you see then in part culminated in</p> <p>8 Exhibit -- Exhibit 4 to my March 27th, 2015,</p> <p>9 report which we've marked as Exhibit 002 to this</p> <p>10 deposition, is a summary then of all of the</p> <p>11 documents that were bid documents that I was</p> <p>12 able to compile.</p> <p>13 So I was trying to evaluate the data</p> <p>14 with respect to the statements that were being</p> <p>15 made and compile or analyze that depending on</p> <p>16 what the data was.</p> <p>17 Q. Did you look at -- or did you ask</p> <p>18 either of the owners for their documents with</p> <p>19 respect to bids?</p> <p>20 MS. WELCH: Objection to form.</p> <p>21 THE WITNESS: Again, I asked more broadly</p> <p>22 than that. I asked regardless of the parties,</p> <p>23 any -- I asked for any and all bid documents so</p> <p>24 I did it a couple ways, one was I interviewed</p>
<p style="text-align: right;">Page 66</p> <p>1 I think, you know, Monterey and CMC projects,</p> <p>2 PMAs or something to that effect, I think as</p> <p>3 I look back at that, that's not included, that's</p> <p>4 something that comes before the four bullets,</p> <p>5 because that's clearly what I'm doing is just</p> <p>6 simply identifying examples of things that</p> <p>7 I noted in either testimony or declarations</p> <p>8 which were inconsistent with what I understood</p> <p>9 either the actual provision to read or what</p> <p>10 I understood the spirit of the provision to</p> <p>11 read, if you will.</p> <p>12 Q. Then you said -- you said you performed</p> <p>13 a review of the Pinnacle document production to</p> <p>14 evaluate these employee statements.</p> <p>15 What do you mean by evaluate these</p> <p>16 employee statements?</p> <p>17 A. It's similar to what I -- I used</p> <p>18 throughout this, when I do the work order</p> <p>19 analysis that I do as well, is that basically,</p> <p>20 I gathered, summarized and otherwise compiled</p> <p>21 data with respect to the underlying activity</p> <p>22 that might be the subject, so these are</p> <p>23 either -- you might view these as either</p> <p>24 allegations made or statements made around how</p>	<p style="text-align: right;">Page 68</p> <p>1 folks physically when I was doing the work and</p> <p>2 asking about bids. I then asked counsel to make</p> <p>3 available or identify for me all bid documents</p> <p>4 regardless of whether it came from the owner,</p> <p>5 the asset manager or the manager.</p> <p>6 BY MR. DUTTON:</p> <p>7 Q. Well, Mr. Dudney, I understand. You've</p> <p>8 interviewed a lot of people about the bid</p> <p>9 process, right?</p> <p>10 A. Yes.</p> <p>11 Q. And you've interviewed people at both</p> <p>12 Fort Irwin, Moffett, Parks and Monterey, right?</p> <p>13 A. Yes.</p> <p>14 Q. And you've presented testimony from</p> <p>15 four people, okay, right?</p> <p>16 A. There are four examples that I have</p> <p>17 included that are in the context that I</p> <p>18 articulated in my report.</p> <p>19 Q. And those are the only four you refer</p> <p>20 to in this report that goes for 94 pages?</p> <p>21 MS. WELCH: Objection to form.</p> <p>22 BY MR. DUTTON:</p> <p>23 Q. With respect to lack of control over</p> <p>24 vendor selection and bids, right?</p>

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<p style="text-align: right;">Page 69</p> <p>1 A. Well, these are -- these are the four 2 that I put in this particular section. I -- 3 there are other quotes that I have in here, for 4 example with respect to Mainscape when I did the 5 analysis there, that arguably, I could have put 6 in here as well. 7 For example, you know, the -- some of 8 the issues surrounding Mr. Wimer's relationship 9 with Mainscape, but again, these were just four 10 examples that set to me the context then for my 11 review because these statements are what they 12 are, and my work centered around then analyzing 13 the data with respect to the bids themselves. 14 Q. So you didn't have any similar 15 statements from people who worked at Monterey? 16 A. I didn't call out any similar 17 statements for somebody at Monterey. That's -- 18 I'm not testifying that they don't exist some 19 within the -- you know, it's -- I mean, the 20 stack of declarations themselves has got to be, 21 you know, maybe three quarters of a foot high 22 and then there's deposition testimony on top of 23 that. 24 So I can't say that it was --</p>	<p style="text-align: right;">Page 71</p> <p>1 well over the established \$25,000 limit. 2 Do you see that? 3 A. Yes. 4 Q. And you don't include the owner's audit 5 with respect to Monterey, right? 6 A. Let me just read that paragraph real 7 quick. And could I have your last question read 8 back? 9 (WHEREUPON, the record was read 10 by the reporter as requested.) 11 THE WITNESS: Well, I include it in the next 12 sentence, it's a different time period, but as 13 it relates to September, 2007, no, but the next 14 -- very next sentence is related to Monterey, 15 June 2007. 16 BY MR. DUTTON: 17 Q. Consistent with our document review is 18 subsequent internal audit review in December of 19 2009. You're saying that's the Monterey one or 20 is that -- 21 A. I am sorry. Where are you reading 22 from? 23 Q. I'm reading in the same paragraph on 24 the second -- actually, it's the first full</p>
<p style="text-align: right;">Page 70</p> <p>1 throughout that document, set of documents, that 2 there aren't similar statements but these are 3 the four that I chose to put in my report. 4 Q. So none of the other statements or 5 declarations met the criteria, whatever that is, 6 that you used to identify the selections that 7 were going to be in your report? 8 A. Ultimately, I decided that these four 9 were sufficient in terms of setting the context 10 for what the analysis was that I was doing with 11 respect to the bids. 12 Q. None of these three relate to Monterey 13 at all, do they? 14 A. There are four, and no, these don't 15 relate to Monterey. These relate to Irwin. But 16 as you know, Exhibit 4 looked at both -- on the 17 front page of the two-page exhibit is Monterey 18 and on the back is Irwin. 19 Q. Now you talk on Page 12 under the same 20 section, lack of control over vendor selection 21 and bidding, about the owner's internal audit 22 group performed a review of CMC projects in 23 September 2007, finding that required contracts 24 were not obtained for vendors, expenditures were</p>	<p style="text-align: right;">Page 72</p> <p>1 paragraph of Page 12 of your report. 2 A. Yes. 3 Q. Okay? CMC, right? That means Fort 4 Irwin, Moffett and Parks, correct? 5 A. Yes. 6 Q. And you quote a September 2007 finding 7 that required contracts were not obtained, 8 correct? 9 A. Yes, I'm sorry. I was down at the last 10 paragraph on that page so that's where we were 11 disconnected. 12 Q. That's what you quote, correct? That 13 required contracts were not obtained for vendors 14 with expenditures well over \$25,000, right? 15 A. Correct. 16 Q. That quote doesn't have to do with the 17 minimum bids. The minimum bids is in the second 18 sentence, right? 19 MS. WELCH: Objection to form. 20 BY MR. DUTTON: 21 Q. Let me -- let me just ask: Footnote 24 22 refers to a CMC internal control review, right? 23 A. Correct. 24 Q. Footnote 25 refers to a CMC internal</p>

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<p style="text-align: right;">Page 73</p> <p>1 control review, right?</p> <p>2 A. Correct.</p> <p>3 Q. None of them refer to the Monterey</p> <p>4 internal control review, correct?</p> <p>5 A. Neither of those do, that's correct.</p> <p>6 Q. So for that paragraph and for this</p> <p>7 section, lack of control over vendor selection</p> <p>8 bidding, you don't cite to any specific examples</p> <p>9 of audit findings or any specific statements</p> <p>10 from any declarants or witnesses dealing with</p> <p>11 lack of internal -- sorry, lack of internal</p> <p>12 controls over vendor selection and bidding,</p> <p>13 right?</p> <p>14 A. I haven't cited to any in that</p> <p>15 particular set of paragraphs that you're</p> <p>16 pointing to.</p> <p>17 Q. The next section, Section B, is lack of</p> <p>18 controls over vendor contracts.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And how is that different from</p> <p>22 Section A?</p> <p>23 A. This part of the review that was done</p> <p>24 by the auditor at the time relates to -- not in</p>	<p style="text-align: right;">Page 75</p> <p>1 Having said that, separate and apart from what</p> <p>2 was in the internal control reviews, I know that</p> <p>3 we have the Mainscape contracts so I can answer</p> <p>4 that yes, they existed.</p> <p>5 Q. And you didn't look to see whether the</p> <p>6 Navigant internal control review had found the</p> <p>7 contracts or the minimum bids that the Clark</p> <p>8 Realty Capital internal control review didn't</p> <p>9 find?</p> <p>10 A. I just don't recall what conclusions</p> <p>11 that particular review reached.</p> <p>12 Q. With respect to the next section, lack</p> <p>13 of segregation of duties, the owners -- you say</p> <p>14 the owners' internal audit team identified lack</p> <p>15 of segregation of duties related to invoice</p> <p>16 processing and payment at the CMC projects.</p> <p>17 A. Correct.</p> <p>18 Q. And tell us specifically what that lack</p> <p>19 of segregation of duties was, Mr. Dudney.</p> <p>20 A. I think it's the next sentence. In</p> <p>21 September 2007, their internal audit findings</p> <p>22 report stated individuals in accounting have</p> <p>23 access to processed invoices, print and mail</p> <p>24 checks, also vendor setup is logically</p>
<p style="text-align: right;">Page 74</p> <p>1 the bidding per se, but it's the actual looking</p> <p>2 at the contract and the retention of the</p> <p>3 contract itself, generally circulating around</p> <p>4 the concept that -- trying to understand what</p> <p>5 the provision of services was called -- that was</p> <p>6 called for under the contract, what were the</p> <p>7 rates and what the invoicing then consistent</p> <p>8 with that, so that's a different way of</p> <p>9 assessing controls with respect to contracts</p> <p>10 that were supposed to be in place or were in</p> <p>11 place.</p> <p>12 Q. Now, with respect to Mainscape, did you</p> <p>13 find the Mainscape contracts?</p> <p>14 A. Yes.</p> <p>15 Q. So those existed?</p> <p>16 A. Yes.</p> <p>17 Q. So lack of controls over vendor</p> <p>18 contracts, Section B, doesn't really refer</p> <p>19 specifically to the Mainscape contracts?</p> <p>20 A. I don't know that they state in the</p> <p>21 internal control reviews, Mr. Dutton, the --</p> <p>22 they point to one contract, DMC, but I don't</p> <p>23 know that there's a mention particularly of</p> <p>24 Mainscape, I'd have to go back and look at it.</p>	<p style="text-align: right;">Page 76</p> <p>1 restricted. However, new vendor setup only</p> <p>2 requires accounting staff to fill out and send</p> <p>3 the form, and then it goes on to say, the</p> <p>4 internal audit team concluded that this lack of</p> <p>5 segregation of duties could result in, quote,</p> <p>6 risk of lost duty, potential fraud, close quote,</p> <p>7 and then it further obviously goes on and talks</p> <p>8 about December 2009 internal audit review at CMC</p> <p>9 where they, quote, determined that there was a</p> <p>10 -- I should say quote, segregation of duties</p> <p>11 problem exists, where several Pinnacle employees</p> <p>12 have access to both Yardi policing module and AP</p> <p>13 module. Some of the AP and accounting staff</p> <p>14 have access to create, print and post checks,</p> <p>15 close quote.</p> <p>16 Q. With respect to individuals in</p> <p>17 accounting, was there -- were there any</p> <p>18 improprieties relating to individuals in</p> <p>19 accounting that were found in any of these</p> <p>20 audits?</p> <p>21 A. I don't recall that they identified</p> <p>22 any -- any improprieties with a specific</p> <p>23 identification of an individual. I think</p> <p>24 they're talking about the environment, that it</p>

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<p style="text-align: right;">Page 77</p> <p>1 exists that there is a risk associated with the 2 way it's set up. 3 Q. With respect -- with respect to the 4 allegations of this case, Mr. Dudney, are you 5 aware of any allegations of improprieties with 6 respect to the individuals in accounting? 7 A. I would -- by that definition, I'm 8 going to exclude Mr. Wimer from that, because 9 I understand him to have more of an operational 10 role, and not play a part in the accounting 11 side, so setting that aside, I'm not aware of a 12 specific individual in accounting that is a 13 subject of a particular allegation. That's not 14 to say it doesn't exist, but I'm not aware of it 15 if there is. 16 Q. And there -- you agree with me that 17 with respect to lack of segregation of duties, 18 there's nothing in this one paragraph, 19 Section C, relating to Monterey, Moffett or 20 Parks? 21 A. Well, I'd have to look back because 22 they are talking about the CMC projects. It 23 certainly does not include Monterey. Whether it 24 includes Moffett or not, I would have to look</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. With respect to the Monterey project, 2 how do your observations with respect to 3 internal control deficiencies relate to the 4 allegations of the complaint? 5 MS. WELCH: Objection, calls for a legal 6 conclusion. 7 BY MR. DUTTON: 8 Q. Specifically, with -- when I say 9 internal control deficiencies, I mean your 10 observations in Section 1 or Part 5A1 of your 11 report. 12 MS. WELCH: Same objection. 13 THE WITNESS: Can I ask to have that question 14 read back, please? 15 (WHEREUPON, the record was read 16 by the reporter as requested.) 17 THE WITNESS: So that they -- they relate in 18 that there are -- as an example, I point to on 19 Page 12 under -- which is in the section that 20 you noted which is Roman 5A Arabic 1 in 21 Subsection B on Page 12 at the last paragraph 22 that's partial, I note that, for example, quote, 23 a June 2007 internal audit of the Monterey 24 project similarly noted that -- I'm sorry,</p>
<p style="text-align: right;">Page 78</p> <p>1 back at them. 2 Q. So it doesn't include Monterey for 3 sure? 4 A. That's correct. Not -- the citations 5 that I make in the lack of segregation of duties 6 does not include Monterey. 7 Q. Are you aware, Mr. Dudney, specifically 8 with respect to the Monterey project, whether 9 there are allegations in the lawsuit, in the 10 complaint, relating to improprieties or 11 deficiencies with respect to vendor contracting? 12 A. I'd have to look back at the complaint. 13 Obviously, it says what it says, but I think 14 it's been amended now five times or something, 15 so there's a number of versions of it, but I 16 don't recall that there is a specific allegation 17 with respect to that, there may be again, but I 18 don't -- I'd have to look back at the complaint. 19 Q. Sitting here today, you're not aware of 20 any allegations of improprieties or deficiencies 21 that are alleged to have occurred with respect 22 to vendors at the Monterey project? 23 A. I believe that's correct to the best of 24 my recollection right now.</p>	<p style="text-align: right;">Page 80</p> <p>1 quote, controls over vendor contracts should be 2 strengthened for two of three vendor contracts 3 requested. We found that one could not be 4 located, DMC Construction and the other vendor 5 had an addendum which was not properly approved. 6 So I understood that there were 7 allegations generally with respect to the 8 provision of property management services in the 9 compliance with the PMA, and this informed me as 10 to -- as I did my interviews and other aspects 11 of the forensic audit that I conducted, one of 12 the things, as we've talked about I was looking 13 at and looking for, was the bid in contract 14 environment and so part of that helped to inform 15 and result in what is Exhibit 4 and the work 16 that I did there, so I understand that it 17 relates to the allegations, in that broadly, I 18 understand the allegations to include, with 19 respect to Monterey as well as CMC, that there 20 were deficiencies with respect to the property 21 management services that were provided there, so 22 that's my understanding of how they relate. 23 BY MR. DUTTON: 24 Q. You're not aware of any allegations</p>

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<p style="text-align: right;">Page 81</p> <p>1 relating to the Monterey project with respect to</p> <p>2 deficiencies in bidding or vendor selection, are</p> <p>3 you?</p> <p>4 MS. WELCH: Same objection, calls for a legal</p> <p>5 conclusion.</p> <p>6 THE WITNESS: I'd have to look back at the</p> <p>7 complaint to say more clearly.</p> <p>8 BY MR. DUTTON:</p> <p>9 Q. What allegations are you aware of,</p> <p>10 Mr. Dudney, with respect to the Monterey project</p> <p>11 of -- in allegations in the complaint of bidding</p> <p>12 or vendor improprieties?</p> <p>13 A. Well, again, I'd have to look back at</p> <p>14 the complaint, so I can't answer with what's in</p> <p>15 the complaint. I just have an understanding</p> <p>16 that the allegations at least in part surround</p> <p>17 the provision of the property management</p> <p>18 services and with respect to whether or not</p> <p>19 Pinnacle was complying with those for purposes</p> <p>20 of determining whether the -- the contracts have</p> <p>21 terminated or not, at least being one issue, as</p> <p>22 I understand the case, and so I have prepared in</p> <p>23 addition to the written report, Exhibit 4 to</p> <p>24 that report, which lists out for each year, for</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Why did you use the word manipulation</p> <p>2 instead of change?</p> <p>3 A. Because I think that the data was --</p> <p>4 I thought that was a more descriptive term and</p> <p>5 -- for the purposes of the section that I wrote.</p> <p>6 Q. So that choice was yours?</p> <p>7 A. I -- I mean, the choice ultimately is</p> <p>8 mine in all of -- in all of this report.</p> <p>9 Q. So -- so choosing manipulated instead</p> <p>10 of changed or updated is yours?</p> <p>11 A. Yes.</p> <p>12 Q. And manipulated implies that all of the</p> <p>13 changes were improper, doesn't it?</p> <p>14 A. At the end of the day, what I would say</p> <p>15 is that I've made observations with respect to</p> <p>16 -- and identified those changes which I think</p> <p>17 are improper. I'm not suggesting anywhere in</p> <p>18 the report that every time a change is made,</p> <p>19 I mean, there's plenty of examples where a</p> <p>20 change that can be made is not manipulative or</p> <p>21 in my view improper, but there were --</p> <p>22 obviously, it's articulated in my report, there</p> <p>23 are substantial examples of where I think that</p> <p>24 the data supports a conclusion that the data</p>
<p style="text-align: right;">Page 82</p> <p>1 the major contract categories, the bids that I</p> <p>2 was able to find, and whether or not I was able</p> <p>3 to find them, which I understand go to that</p> <p>4 general set of allegations.</p> <p>5 Q. The next section of your report under</p> <p>6 Section 5A, subparagraph -- or Subsection 2, you</p> <p>7 entitle manipulation of work order response</p> <p>8 data.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What do you mean by manipulation,</p> <p>12 Mr. Dudney?</p> <p>13 A. Changing data. And this section of the</p> <p>14 report generally talks about the findings that I</p> <p>15 have reached with respect to my analysis of work</p> <p>16 order data and work order documents, to see if</p> <p>17 there was a demonstration of that data being</p> <p>18 manipulated, meaning changed, and given various</p> <p>19 statements that people have made in declarations</p> <p>20 and/or in depositions with respect to the fact</p> <p>21 that their view was that either it was going on</p> <p>22 or that they themselves, in fact, engaged in</p> <p>23 work order manipulation and changing data to --</p> <p>24 to achieve a different result.</p>	<p style="text-align: right;">Page 84</p> <p>1 was, in fact, manipulated.</p> <p>2 Q. All right. So I take it, you agree</p> <p>3 with me that there are also substantial examples</p> <p>4 where data was updated or changed, and such</p> <p>5 updates or changes are not manipulation?</p> <p>6 A. I think there certainly can be and --</p> <p>7 there certainly are situations that would result</p> <p>8 in changes to the data, which I would not view</p> <p>9 as manipulative. They would be updates or they</p> <p>10 would be other things that would be potentially</p> <p>11 proper, so yes, I would agree that there are --</p> <p>12 there are examples of that as well.</p> <p>13 Q. When you were -- when you were writing</p> <p>14 this report, were you worried that you were</p> <p>15 going to use the word manipulation too broadly?</p> <p>16 MS. WELCH: Objection to form.</p> <p>17 THE WITNESS: No. I'm comfortable, as I sit</p> <p>18 here today, that the -- the use of that word for</p> <p>19 the purposes of title, I think if I -- I'm not</p> <p>20 uncomfortable with it in light of the findings</p> <p>21 and what I would say is that, you know, my</p> <p>22 opinions are obviously detailed throughout this</p> <p>23 report, both in this report as well as other --</p> <p>24 the -- my rebuttal report with respect to this</p>

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<p style="text-align: right;">Page 85</p> <p>1 subject matter, and so it's -- I'm comfortable 2 with the opinion and the conclusion that I 3 talked to earlier. 4 BY MR. DUTTON: 5 Q. So is it your opinion that -- that what 6 was going on was manipulation? 7 A. I think that there is evidence in the 8 work order data that I've summarized which is 9 consistent with the statements that I saw, that 10 would evidence manipulation. 11 Q. Do you agree with me that with respect 12 to specific incidents where work orders or work 13 order information was changed in Yardi, that 14 there is room for a difference of opinion on 15 whether the change was manipulative or whether 16 it was proper? 17 MS. WELCH: Objection to form. 18 THE WITNESS: I -- I think in -- of course, I 19 think you could have different interpretations 20 of things as a concept, and so we would have to 21 look at specific situations as to whether or not 22 I would think or agree with you that a specific 23 situation, in fact, has a -- a circumstance that 24 reasonably -- two reasonable minds could differ</p>	<p style="text-align: right;">Page 87</p> <p>1 know, whether or not I found consistencies with 2 respect to various allegations that were made in 3 -- or statements that were made in sworn 4 statements or deposition testimony. 5 Q. Let me go back for a second to the 6 first section, a section over, internal control 7 deficiencies? 8 A. Yes. 9 Q. You said, I believe, that you 10 interviewed a bunch of people from Fort Irwin 11 and Fort -- sorry, and Monterey; is that 12 correct? 13 A. I did. 14 Q. None of the people -- none of the 15 examples that you cite in your report come from 16 interviews that you did? 17 MS. WELCH: Objection to form. 18 THE WITNESS: The four, if you're asking me 19 specifically about the four points that are 20 listed on Page 11, no, none of those are from 21 interviews that I took. 22 BY MR. DUTTON: 23 Q. Those are from declarations taken by 24 plaintiff's counsel, right?</p>
<p style="text-align: right;">Page 86</p> <p>1 with respect to that, so yes, I think there are 2 situations like that, we'd have to be more 3 specific if we'd want to, you know, talk about a 4 particular situation. I would be happy to look 5 at that. 6 BY MR. DUTTON: 7 Q. Well, isn't it ultimately a decision 8 for the jury and for the judge whether or not 9 the changes that were made to data in Yardi, 10 work order response time data, are manipulative 11 or proper? 12 A. I think as to all the issues in the 13 case, it's ultimately up to the judge and the 14 jury to make a determination, and what I've done 15 is simply analyzed the data with respect to 16 statements that were made to determine if there 17 were -- if that data was consistent with that 18 and people -- what people describe in their 19 statements is -- I think would be fairly 20 characterized as manipulation of work order 21 data, and so that's why I titled the section 22 that, but I think it's pretty clear, as you read 23 my analysis, what I've done is analyzed the data 24 and demonstrate instances where I found, you</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I'm not sure if -- I'd have to look 2 back to see if it even demarcs who took them, 3 but I do understand that plaintiff's counsel 4 obtained some statements. I understand that you 5 and your firm obtained statements. For example, 6 I don't know whether Stacia Schuster, for 7 example, in her statement, whether that's one 8 that was generated by interaction with your firm 9 or interaction with the Kirkland & Ellis firm. 10 Q. Let's be specific. The Harold 11 Hernandez statement was a declaration and a 12 deposition, right? 13 A. Yes, that's -- I cite both of those. 14 Q. Those are not interviews that you did? 15 A. I'd have to look back. I don't know 16 that I've met Mr. Hernandez or not. 17 Q. And Jodi George is a declaration that 18 was taken by plaintiff's counsel in a 19 deposition, right? No, you just cite her 20 declaration. 21 A. I just cite the declaration. 22 Q. You didn't cite her deposition? 23 A. I -- not in this particular portion. 24 Q. And you didn't cite any of the</p>

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<p style="text-align: right;">Page 89</p> <p>1 documents that Harold Hernandez had written 2 during the time that he worked at Fort Irwin, 3 did you? 4 A. Not in this section. I think the only 5 two things I cite are his deposition and his 6 statement. 7 Q. When you're trying to evaluate these 8 employee statements, were you -- did you ever 9 try to evaluate whether you could believe what 10 the employees were saying? 11 MS. WELCH: Objection to form. 12 THE WITNESS: Well, with respect to these 13 statements, these were -- with respect to these 14 four that you're pointing to now, these were 15 really -- they again provided context to me as 16 to what -- obviously, various allegations or 17 observations that people were making, where -- 18 and then I did the analyses that I did. 19 Similarly, for the work order area of the report 20 in some ways, it's very consistent in that. At 21 the end of the day, I'm not making a 22 determination as to whether or not somebody was 23 truthful or not. I think that's for the judge 24 and the jury to opine on. I'm simply analyzing</p>	<p style="text-align: right;">Page 91</p> <p>1 statement made -- statements made, which I think 2 could be reasonably interpreted as people were 3 claiming that there was manipulation of work 4 order data. 5 BY MR. DUTTON: 6 Q. Well, then -- why do you -- why -- if 7 what you're doing is analysis of data, why do 8 you entitle Section 2 on Page 13 manipulation of 9 work order response data? 10 A. I wouldn't -- yes, just -- because that 11 was the general tone as I read it of the 12 statements that were made, but you can see in 13 the very first sentence, that my forensic 14 analysis of data and documents surrounding the 15 work order activity, you know, provides evidence 16 that corroborates assertions, they're consistent 17 with. 18 Q. What do you mean by corroborates? 19 A. That they were -- there were 20 allegations, for example, around -- just to take 21 an example, around that over -- overlap of 22 technicians occurred as a result of making 23 changes to work order data. 24 Q. Well, who made that allegation? Let's</p>
<p style="text-align: right;">Page 90</p> <p>1 and presenting data with respect to work orders 2 that was informed, in part, by statements and 3 allegations that people made, and then I went 4 and analyzed the data that surrounded some of 5 those allegations. 6 BY MR. DUTTON: 7 Q. So you didn't care whether or not the 8 particular statements or declarations or 9 testimony was credible? 10 MS. WELCH: Objection to form. 11 THE WITNESS: No. I didn't testify to that. 12 The -- I'm simply recognizing that whether or 13 not someone is being truthful in a deposition or 14 truthful in a -- in a statement that they sign, 15 it isn't what I'm being asked to do and nor what 16 I am doing. I'm simply analyzing the data with 17 respect to the context of those statements. 18 That data relates to those statements and so I'm 19 analyzing the data and how and what weight a 20 jury puts on that or a judge puts on that is for 21 those individuals to determine, but there's -- I 22 was asked to do the data analysis surrounding 23 the Yardi data in recognition and in light of 24 understanding that there were allegations and</p>	<p style="text-align: right;">Page 92</p> <p>1 try to be specific, Mr. Dudney. Who 2 specifically made an allegation that there was 3 overlap of technicians? 4 A. Well, let's go to the overlap section. 5 I think it's -- Mr. Weber may have said that. 6 Q. I want you to try to be specific, 7 Mr. Dudney. Tell me the allegation that 8 Mr. Weber made. 9 A. I'd have to look back. I don't know 10 that I quote the exact testimony, but my 11 understanding is that -- well, what I have here 12 on Page 26 is that under Section D, it says, 13 quote -- and this is now my report, not quoting 14 his affidavit, is that Mr. Weber alleged that 15 the large number of changes made to work order 16 response times in the Yardi system resulted in 17 the anomalous situation in which the same 18 maintenance technician was recorded as having 19 done work in two different locations at the same 20 time. 21 And you can see that it's citing 22 declaration of Robert Weber dated October 15th, 23 2004, Page 3. I think that's Page 3, maybe 24 Paragraph 3, but we could -- if you have that</p>

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<p style="text-align: right;">Page 93</p> <p>1 handy, we could pull that up, but that would be</p> <p>2 the reference.</p> <p>3 Q. That was a declaration taken by</p> <p>4 plaintiff's counsel, correct?</p> <p>5 A. It's a declaration, I can't say,</p> <p>6 without looking at it, whether it's by</p> <p>7 plaintiff's counsel or by defense counsel.</p> <p>8 Q. You don't know one way or the other?</p> <p>9 A. I don't recall without looking at it,</p> <p>10 and I'm not even sure if looking at it, it would</p> <p>11 tell me, but it might.</p> <p>12 Q. In your effort to corroborate the</p> <p>13 statements or the assertions made by certain</p> <p>14 former Pinnacle employees, did you attempt to</p> <p>15 evaluate their credibility at all?</p> <p>16 A. The credibility of the statements?</p> <p>17 Q. Yeah.</p> <p>18 A. The way I think about it is that --</p> <p>19 I wasn't looking at a particular person's</p> <p>20 statement, and without having done analysis, I'm</p> <p>21 not making some evaluation as to the credibility</p> <p>22 of that individual one way or the other. I just</p> <p>23 understood and was provided a statement or a</p> <p>24 series of statements, some of which identified</p>	<p style="text-align: right;">Page 95</p> <p>1 my mindset with respect to all of this analysis</p> <p>2 is that I've analyzed the data, I've presented</p> <p>3 results with respect to that, and a judge or</p> <p>4 jury will decide whether or not and to what</p> <p>5 extent, along with everything else that's</p> <p>6 presented in the case, whether or not, you know,</p> <p>7 they find what they find with respect to work</p> <p>8 order manipulation allegations.</p> <p>9 Clearly, that's an allegation that's</p> <p>10 been made in this case, and I was asked to do</p> <p>11 forensic analysis around work order data and</p> <p>12 I found the results that I did and I've</p> <p>13 presented those results but...</p> <p>14 Q. You state: My forensic analysis of</p> <p>15 data and documents surrounding Pinnacle's</p> <p>16 resident work order activity at the Monterey and</p> <p>17 CMC projects provides evidence which</p> <p>18 corroborates the assertions made by certain</p> <p>19 former Pinnacle employees, who allege that</p> <p>20 Pinnacle falsified work order data and related</p> <p>21 reporting of Pinnacle's response and completion</p> <p>22 times.</p> <p>23 A. Uh-huh.</p> <p>24 Q. And then you have parentheses,</p>
<p style="text-align: right;">Page 94</p> <p>1 circumstances which again, I think would</p> <p>2 reasonably be described as -- that people</p> <p>3 admitted, as an example, engaging in work order</p> <p>4 manipulation, changing data to show results that</p> <p>5 were different than what actually happened. And</p> <p>6 in some cases, being even more specific, that</p> <p>7 that was done in -- with the motivation of</p> <p>8 increasing pass/fail rates.</p> <p>9 I didn't make a judgment with respect</p> <p>10 to the credibility of that statement per se. I</p> <p>11 understood that that statement was made. What</p> <p>12 I did was simply analyze the, you know,</p> <p>13 voluminous work order data to see if there were</p> <p>14 indications in that data that were consistent</p> <p>15 with what was being stated, and then I present</p> <p>16 those findings in my -- in my report.</p> <p>17 Q. Well, you don't use the word</p> <p>18 consistent. You use the word corroborates, and</p> <p>19 I understand that that means make more likely</p> <p>20 true.</p> <p>21 A. Well, the -- and we could pull up the</p> <p>22 definition if you would like of it, but I felt</p> <p>23 that that fairly articulated what I did. At the</p> <p>24 end of the day, I'll -- I'll just tell you that</p>	<p style="text-align: right;">Page 96</p> <p>1 pass/fail reports on both of these projects.</p> <p>2 A. Correct.</p> <p>3 Q. What consideration did you give to</p> <p>4 statements made by these former Pinnacle</p> <p>5 employees or to documents authored by these</p> <p>6 former Pinnacle employees, which makes their</p> <p>7 assertions about work order changes incredible?</p> <p>8 MS. WELCH: Objection to form.</p> <p>9 THE WITNESS: Well, what I endeavored to do</p> <p>10 was -- again, to determine whether or not the</p> <p>11 data was -- let me say it this way.</p> <p>12 I understood there were a series of allegations</p> <p>13 that were being made in the case. I understood</p> <p>14 that part of those allegations are also made in</p> <p>15 witness statements, declarations, depositions,</p> <p>16 other forms, whereby -- whereby -- I was then</p> <p>17 asked to analyze work order data with respect to</p> <p>18 those allegations and that's what I've done.</p> <p>19 There are then cases and circumstances and</p> <p>20 I point to them, where there are e-mails, there</p> <p>21 are other documents that involve the people that</p> <p>22 are consistent with some or are germane, I would</p> <p>23 say, to some of the analyses that I've done and</p> <p>24 I've identified those.</p>

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<p style="text-align: right;">Page 97</p> <p>1 But I'm not -- I'm not separately 2 suggesting that every piece of e-mail or other 3 evidence that might be put forward in the case 4 with respect to these, was part of my analysis. 5 My analysis was of the work order data, and then 6 in some cases, there were e-mail or Excel files 7 or other things which were part of that, and 8 obviously, the hard copy work orders themselves 9 were again a prime and key document to the 10 analysis that we did in addition to the Yardi 11 data, but I've presented an analysis of the data 12 itself and what observations I made with respect 13 to that. I don't think I say anywhere in here, 14 and if I leave the impression, I can clear it up 15 now, which is that I'm not suggesting that every 16 piece of evidence that might be germane to a 17 jury's or a judge's consideration of these 18 claims, it's contained within the four walls of 19 my report. It's that the -- but I have done 20 data analysis around that which I believe is 21 germane to consideration and evaluation of those 22 statements ultimately. 23 BY MR. DUTTON: 24 Q. Well, let's look at the first set of</p>	<p style="text-align: right;">Page 99</p> <p>1 will ultimately determine the significance of 2 these statements. Further, some of the 3 individuals have made sworn statements -- that 4 have made sworn statements have been deposed or 5 may be in the future, certain of the topics 6 covered in the sworn statements were covered 7 during the depositions that have taken place. 8 And I go on to say, as fact discovery is ongoing 9 and as the Court will ultimately interpret and 10 determine the significance of any testimony 11 given, I have not to date included any testimony 12 at depositions -- given at depositions unless 13 specifically noted in Table 1 below. 14 And so my point there is that this was 15 contextual and as part of the -- because I was 16 doing a -- again, a forensic audit into what -- 17 what took place here, and I understood that 18 there were allegations. This table is simply 19 contextual, where it, for me, identifies general 20 categories of, you know, allegedly improper 21 behavior that took place and sort of who said 22 what at which project around that subject. 23 Obviously, there are actual depositions and 24 statements and those are what they are. So this</p>
<p style="text-align: right;">Page 98</p> <p>1 what you call data analysis which starts on 2 Page 17 under the section that you call work 3 order affidavit/deposition discussion. 4 A. Yes. 5 Q. Now, before we get into that, 6 Mr. Dudney, was it your goal to present 7 fairly the work order affidavits and depositions 8 that were taken in this case that result -- 9 related to work orders? 10 MS. WELCH: Objection to form. 11 THE WITNESS: Can I ask to have that read 12 back, please. 13 (WHEREUPON, the record was read 14 by the reporter as requested.) 15 THE WITNESS: When you say fairly, I'm not 16 sure what you mean with respect to that, because 17 that makes it sound like I'm making a judgment 18 on it one way or the other and I'm not. What 19 I say in this section is that -- and I'll just 20 quote Page 17: As stated, Table 1 was prepared 21 as part of the Monterey and CMC reviews to 22 provide a summary of our general observations 23 regarding certain aspects of the former employee 24 sworn statements. I understand that the Court</p>	<p style="text-align: right;">Page 100</p> <p>1 table to me is nothing more than a summary for 2 the purposes of providing context with respect 3 to the actual work that I do. I don't have 4 opinions with respect to the classification and 5 what these people said. They said what they 6 said, and that's, you know, for the Court to 7 analyze, but this was really to set up and 8 provide the reader context with respect to the 9 analysis that I undertook. 10 BY MR. DUTTON: 11 Q. Well, you certainly must have opinions 12 about them because you specifically selected 13 these statements for inclusion in your report, 14 right, Mr. Dudney? 15 A. Yes. I did select them and I thought 16 that they were -- they were ones that identified 17 potential improper behavior or people admitted 18 to doing things that they said, I did X, and 19 that, you know, what have you, and so I was 20 simply noting that here, and then doing analysis 21 with that context in mind. 22 Q. And -- and there are other statements 23 and declarations and testimony that you have 24 excluded from this, right?</p>

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<p style="text-align: right;">Page 101</p> <p>1 A. Certainly, this is not the entire body 2 of testimony that's been provided. 3 Q. So the only thing that you have 4 presented here are the specific statements that 5 you have selected as part of your contextual 6 background for your analysis, right? 7 A. Yes. Because I was trying to 8 investigate and determine whether there was data 9 that was consistent with some of the 10 allegations. 11 Q. And -- 12 A. Because there's obviously conflicting 13 -- there's people that say that this never 14 happened, I mean. 15 Q. You have this table, where you -- you 16 have -- let's take Mr. Draper who is the first 17 example. Mr. Draper -- did you read his 18 deposition? 19 A. I have. 20 Q. And did you -- did you learn from his 21 deposition that he was partnered with a Pinnacle 22 employee named Tim Spears? 23 A. I don't. That doesn't ring a bell with 24 me. It's been awhile.</p>	<p style="text-align: right;">Page 103</p> <p>1 said Mr. Draper and Mr. Spears did turn work, 2 not maintenance work? 3 A. I -- I don't remember that specific 4 testimony. 5 Q. And you cite -- you cite Mr. Draper's 6 testimony where you say, he -- he -- Pinnacle 7 improperly changed work order response times 8 from fail to pass. 9 Do you see that? That's the third 10 column over. 11 A. Yes. 12 Q. Top row, Mr. Draper. 13 A. Correct. 14 Q. And then you see the next column over, 15 he says he was instructed by management to 16 change work orders from fail to pass. 17 Do you see that? 18 A. Yes, uh-huh. 19 Q. And those -- those were things that -- 20 and then you have -- what's interesting is you 21 have a footnote. 22 A. Uh-huh. 23 Q. On page -- Footnote 45. 24 Do you see that?</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. Did you know that Mr. Spears was 2 also -- also gave a declaration in this case? 3 A. Yes, because I've read every 4 declaration. 5 Q. Okay. And you're aware that Mr. Spears 6 then gave a subsequent declaration to defense 7 counsel where he disavowed everything he said 8 practically in the first declaration? 9 MS. WELCH: Objection to form and 10 mischaracterization of the record. 11 THE WITNESS: Mr. Spears' specific 12 declaration isn't at the forefront of my mind's 13 eye right now, but there were several people 14 that -- where there were two statements made, 15 one statement made and the second one which 16 either modified, changed or somehow impacted 17 what was said in the first one, so there was 18 several instances of that. 19 BY MR. DUTTON: 20 Q. Did you -- did you read that Mr. Spears 21 said that Mr. Draper was his -- was his partner 22 while he worked at Pinnacle? 23 A. I don't recall that specific testimony. 24 Q. And did you see the testimony where he</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes. 2 Q. And that cites to his deposition 3 testimony, right? 4 A. Yes. 5 Q. And he said at his deposition, 6 Mr. Draper testified that he did not personally 7 enter time into the Yardi system. 8 Do you see that? 9 A. Yes. 10 Q. Did you understand he didn't enter time 11 into the Yardi system is because he was a turn 12 worker, not a maintenance worker? 13 MS. WELCH: Objection, form, mischaracterizes 14 the record. 15 THE WITNESS: Yeah, I do -- without going 16 back and looking at the specific statements, I 17 don't know that I could provide any 18 clarification, let's put it that way. 19 BY MR. DUTTON: 20 Q. How can you say his statement is a yes 21 under the first two columns when Footnote 45 22 says he did not personally enter time into the 23 Yardi system? 24 A. Because you could be instructed by</p>

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<p style="text-align: right;">Page 105</p> <p>1 management, whether or not you actually do it or</p> <p>2 not, is separate. If he understood or there was</p> <p>3 testimony around that there were instructions</p> <p>4 from management with respect to that, that would</p> <p>5 be one way.</p> <p>6 Q. Well, you know, you have the Yardi</p> <p>7 data, right?</p> <p>8 A. Yes.</p> <p>9 Q. You have the Yardi backup tapes?</p> <p>10 A. Yes.</p> <p>11 Q. And if Mr. Draper had been somebody who</p> <p>12 operated Yardi or entered time or data into</p> <p>13 Yardi, he would have had a password, right?</p> <p>14 A. Generally speaking, yes. There were</p> <p>15 certainly instances of people where they did not</p> <p>16 use their own user name and password. They used</p> <p>17 someone else's, so I think as a general matter,</p> <p>18 they were supposed to, but it didn't always work</p> <p>19 that way.</p> <p>20 Q. Did you see any indication from the</p> <p>21 data that Mr. Draper was changing work order</p> <p>22 data in Yardi?</p> <p>23 A. I don't know that we have a specific</p> <p>24 analysis with respect to Mr. Draper that I</p>	<p style="text-align: right;">Page 107</p> <p>1 indicates the maintenance employees who</p> <p>2 performed the particular work orders in</p> <p>3 question, right?</p> <p>4 A. I'm sorry. I'm going to have to ask to</p> <p>5 have that read back, please.</p> <p>6 Q. I'll ask it again.</p> <p>7 A. Okay.</p> <p>8 Q. There is a field in the Yardi database</p> <p>9 that allows people to identify the specific</p> <p>10 maintenance tech that is responding to a work</p> <p>11 order?</p> <p>12 A. Correct. It -- it's not always filled</p> <p>13 in, but it has the ability to have that,</p> <p>14 correct.</p> <p>15 Q. It's often filled in, is it not?</p> <p>16 A. There's certainly a number of instances</p> <p>17 where it is, yes.</p> <p>18 Q. That's also indicated on the paper work</p> <p>19 orders that you reviewed, right?</p> <p>20 A. Correct.</p> <p>21 Q. And you don't have any paper work</p> <p>22 orders or any data in Yardi showing that</p> <p>23 Mr. Draper actually was doing work orders, do</p> <p>24 you?</p>
<p style="text-align: right;">Page 106</p> <p>1 recall. I might have to go back and look.</p> <p>2 There's a number of tabs in the different</p> <p>3 reports I've produced, but I don't recall that</p> <p>4 Mr. Draper is specifically called out. Just</p> <p>5 give me one second though, and I'll take a look</p> <p>6 at a couple of things.</p> <p>7 Yeah, in the -- and I've just been</p> <p>8 flipping through some of the exhibits to earlier</p> <p>9 reports that were prepared in this matter, just</p> <p>10 to see if any of those separately called out</p> <p>11 Mr. Draper and I don't see that he's identified</p> <p>12 there, so I would have to actually look at the</p> <p>13 data itself, but in the analyses that we've</p> <p>14 called out, we don't have a specific one that I</p> <p>15 can see where -- that pointed to Mr. Draper.</p> <p>16 Q. Mr. Draper didn't enter any time into</p> <p>17 Yardi at least according to the Yardi database,</p> <p>18 correct?</p> <p>19 A. I'd have to check the Yardi database to</p> <p>20 answer that.</p> <p>21 Q. Sitting here today, you don't know one</p> <p>22 way or the other?</p> <p>23 A. Not without going back and looking, no.</p> <p>24 Q. And, in fact, the Yardi database also</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I'd have to -- sitting here today, I'd</p> <p>2 have to -- I can't answer because I don't have</p> <p>3 the data in front of me, I'd have to go back and</p> <p>4 look at the data to see if Mr. Draper's</p> <p>5 mentioned. It's obviously a tremendous volume</p> <p>6 of data. It's over a hundred, you know, it's --</p> <p>7 over a hundred thousand work orders, so...</p> <p>8 Q. You didn't look at that data and</p> <p>9 attempt to corroborate Mr. Draper's assertions</p> <p>10 in this case?</p> <p>11 A. I looked at the data that I did. The</p> <p>12 inclusion of Mr. Draper, it was simply, you</p> <p>13 know, part of, again, setting the context that</p> <p>14 there were allegations around various issues</p> <p>15 that took place. In certain instances, the</p> <p>16 analyses lent themselves to focusing on specific</p> <p>17 individuals because of the nature of the</p> <p>18 allegation they made.</p> <p>19 In the case of Mr. Draper, my</p> <p>20 recollection is that it didn't, but it was still</p> <p>21 just simply a background with respect to and</p> <p>22 context -- providing that background and context</p> <p>23 with respect to the analysis that I ultimately</p> <p>24 did and that shows what it shows.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. So -- so -- did I hear you correctly?</p> <p>2 Did you say that the data analysis that you did,</p> <p>3 did not support Mr. Draper's assertions?</p> <p>4 A. No, you didn't, you didn't hear me</p> <p>5 correctly. The -- what I was answering was</p> <p>6 simply that I list out, one, two, three, four,</p> <p>7 five, six -- 13 different people in this table</p> <p>8 and as I mentioned, this is just certain of the</p> <p>9 statements that were made that highlight to me</p> <p>10 various types of issues that were being raised</p> <p>11 by people. Obviously, some of these are more</p> <p>12 specific and some are less. It's the nature of</p> <p>13 the statement, it speaks to itself and I point</p> <p>14 out obviously the person and so forth.</p> <p>15 This was simply to provide, as I said,</p> <p>16 context and background because I understood that</p> <p>17 there were these either admissions that were</p> <p>18 made and there certainly were allegations around</p> <p>19 this by the plaintiff, and I was then simply</p> <p>20 informing myself about the nature of the</p> <p>21 statements that people made and then</p> <p>22 I ultimately conducted analysis of the actual</p> <p>23 data itself. Mr. Draper was one of the 12 or 13</p> <p>24 people that I listed.</p>	<p style="text-align: right;">Page 111</p> <p>1 data in the database, the backup data or the</p> <p>2 paper work orders indicates that Mr. Draper had</p> <p>3 anything at all to do with work order response</p> <p>4 times?</p> <p>5 MS. WELCH: Objection to form, asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Yeah, the -- again, in order to</p> <p>8 answer that, I would want to reread his</p> <p>9 statements. What I will -- what I will say is</p> <p>10 that we don't have a specific analysis that I</p> <p>11 have included in my report with respect to</p> <p>12 Mr. Draper, and to the extent, though,</p> <p>13 Mr. Draper made more broad ranging allegations,</p> <p>14 it could be that some of the analyses that I've</p> <p>15 done are consistent with that statement and</p> <p>16 that's why I would want to go back and look at</p> <p>17 that statement, when you're wanting to get</p> <p>18 specific about Mr. Draper, but the way</p> <p>19 I conducted the analysis, regardless of whether</p> <p>20 it was Mr. Draper or anybody else, I was looking</p> <p>21 for certain types of activity in light of</p> <p>22 allegations that people had made and Mr. Draper</p> <p>23 was one of the 12 or 13 that I cited here, just</p> <p>24 again, as I said, the contextual background for</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. You listed Mr. Draper, but there is</p> <p>2 nothing in the Yardi database that corroborates</p> <p>3 Mr. Draper's involvement with work orders or</p> <p>4 with changing anything in Yardi, is there?</p> <p>5 MS. WELCH: Objection, form.</p> <p>6 THE WITNESS: Before I could answer that</p> <p>7 question more specifically, I'd want to go back</p> <p>8 and just -- given the nature of your question,</p> <p>9 read the specific pieces of his deposition that</p> <p>10 I cite and read his testimony or statements,</p> <p>11 just to be able to be more specific with it. I</p> <p>12 haven't --</p> <p>13 BY MR. DUTTON:</p> <p>14 Q. I didn't ask you about his deposition</p> <p>15 or his statements. I asked about the Yardi</p> <p>16 database that you reviewed and the backup data</p> <p>17 and the paper work orders. Those are the three</p> <p>18 pieces of data or three types of data that you</p> <p>19 reviewed, right?</p> <p>20 A. But you asked me within the context of</p> <p>21 the statements that I ascribed to him, and so</p> <p>22 that's why I said what I said.</p> <p>23 Q. Why don't you just answer my question?</p> <p>24 None of that data that you reviewed, the Yardi</p>	<p style="text-align: right;">Page 112</p> <p>1 understanding the types of allegations being</p> <p>2 made.</p> <p>3 BY MR. DUTTON:</p> <p>4 Q. Did you -- in your effort to</p> <p>5 corroborate the assertions made by these people</p> <p>6 with respect to Fort Irwin or Monterey,</p> <p>7 Mr. Dudney, did you consider that declarations</p> <p>8 taking -- taken of individuals outside of court</p> <p>9 and without opposing counsel or counsel for the</p> <p>10 declarant, might not be reliable?</p> <p>11 A. Not -- knowing that there are certain,</p> <p>12 you know, rules in court as to what's admissible</p> <p>13 and what's not, and my view and understanding of</p> <p>14 it was that the Court would make its</p> <p>15 determination as to what statement, you know,</p> <p>16 whether it will or will not be allowed to be</p> <p>17 part of the trial. Having said that, because I</p> <p>18 was -- had the understanding that I did, which</p> <p>19 is that there were allegations that were made</p> <p>20 writ large with respect to these issues, and I</p> <p>21 was then asked to, if I could, analyze data</p> <p>22 surrounding these allegations and that's what</p> <p>23 I did, and so I didn't place any particular, you</p> <p>24 know, weight or -- and I didn't reach any</p>

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<p style="text-align: right;">Page 113</p> <p>1 evaluation with respect to the credibility of</p> <p>2 someone's statement other than as reflected in</p> <p>3 the data and the conclusions of the data that I</p> <p>4 analyzed.</p> <p>5 Q. Well, then, why did you select</p> <p>6 Mr. Draper for inclusion in your table?</p> <p>7 A. Because he commented on, if I recall</p> <p>8 and again, if you want to show me the citations</p> <p>9 here, I've got them in my work papers as well,</p> <p>10 that there were citations which were consistent</p> <p>11 with the categories.</p> <p>12 Q. Why didn't you cite Mr. Spears?</p> <p>13 A. I'd have to look back at it to see if</p> <p>14 I could answer that question as to why</p> <p>15 Mr. Spears isn't.</p> <p>16 (WHEREUPON, DUDNEY Deposition</p> <p>17 Exhibit Nos. 003-004 were</p> <p>18 marked for identification.)</p> <p>19 BY MR. DUTTON:</p> <p>20 Q. Let me show you what I've marked as</p> <p>21 Exhibit 003 which is the declaration of Timothy</p> <p>22 Spears and Exhibit 004 which is the subsequent</p> <p>23 declaration of Timothy Spears.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 115</p> <p>1 Table 1. Table 1 again was simply a select</p> <p>2 group which I viewed as being -- that they</p> <p>3 were -- these individuals were identifying in</p> <p>4 different ways, certain types of alleged</p> <p>5 behavior and it again provided background and</p> <p>6 context of the work that I did, so let me read</p> <p>7 Mr. Spears here, since you've handed these to me</p> <p>8 and see what -- just refresh my recollection</p> <p>9 with respect to these.</p> <p>10 Okay. I've read both of these.</p> <p>11 Q. Do you see Paragraph 3 of Exhibit</p> <p>12 004 --</p> <p>13 A. Paragraph 3 of Exhibit 004.</p> <p>14 Q. Yes. Which is the second --</p> <p>15 A. Yes.</p> <p>16 Q. -- declaration of Timothy Spears?</p> <p>17 A. Yes.</p> <p>18 Q. Now each of the declarations that are</p> <p>19 presented in Table 1 are declarations that were</p> <p>20 taken by plaintiff's counsel, right?</p> <p>21 A. I'd have to look back to see if I could</p> <p>22 identify that. Sometimes, you can tell if</p> <p>23 there's another signature or a name that I might</p> <p>24 recognize, but I'd have to look back at them.</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. You've read both of those, right?</p> <p>2 A. Yes, but it's been a few weeks since</p> <p>3 I've last looked at them, so if you don't mind,</p> <p>4 I'll read them real quickly here.</p> <p>5 Q. You didn't include either one in your</p> <p>6 report, did you?</p> <p>7 A. When you say include them in my report,</p> <p>8 meaning that they are not on my docs relied on</p> <p>9 listing or that they're not -- it's not cited in</p> <p>10 the table itself?</p> <p>11 Q. In the part of your report that you</p> <p>12 call work order affidavit/deposition discussion,</p> <p>13 you did not include either declaration of</p> <p>14 Timothy Spears, correct?</p> <p>15 A. Timothy Spears is not in Table 1 which</p> <p>16 is on Pages 18 and 19, which I think is in the</p> <p>17 section you're referencing.</p> <p>18 Q. And it's nowhere in that section of</p> <p>19 your analyses where you actually review</p> <p>20 affidavits and deposition testimony?</p> <p>21 A. No. There -- there are scores of --</p> <p>22 there are scores of declarations, and Mr. Spears</p> <p>23 is just one, but no, there's -- there are plenty</p> <p>24 of other declarations that are not part of</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. You can't tell by the mere fact that</p> <p>2 they're included in your report?</p> <p>3 A. No, that wasn't the criteria. The</p> <p>4 criteria was whether or not there were</p> <p>5 allegations that were being made that were the</p> <p>6 subject of the issues in this case. Who took</p> <p>7 them wasn't -- wasn't -- didn't matter to me</p> <p>8 whether it was taken by your firm or by</p> <p>9 plaintiff's firm.</p> <p>10 Q. So it's just a coincidence that each of</p> <p>11 these declarations that you cite in this Table 1</p> <p>12 were taken by plaintiff's counsel? That didn't</p> <p>13 factor into your decision at all, Mr. Dudney?</p> <p>14 A. It did not. It did not.</p> <p>15 Q. And you didn't include the declaration</p> <p>16 of Mr. Spears that was taken by plaintiff's</p> <p>17 counsel, did you?</p> <p>18 A. That's correct, it's not in the table.</p> <p>19 Q. And you didn't include the declaration</p> <p>20 of Mr. Spears that was taken by defense counsel,</p> <p>21 did you?</p> <p>22 A. I didn't include one way or the other</p> <p>23 Mr. Spears in the table. Again, this is just a</p> <p>24 small set of the people that were -- that</p>

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<p style="text-align: right;">Page 117</p> <p>1 provided various statements but Mr. Spears is 2 not one of them that's included. 3 Q. Do you see where -- in Paragraph 3 of 4 his second declaration, which is marked as 5 Exhibit 004, Mr. Spears says: At the end of the 6 meeting, the Clark lawyers asked me to sign a 7 declaration which I did. I read the declaration 8 they gave me but I did not review it closely 9 because I had just returned from the previous 10 day from a long road trip for work and I was 11 very tired. I currently work as a long haul 12 truck driver. I have now reviewed my earlier 13 declaration closely and I have noticed a number 14 of statements that are not correct. In several 15 cases, the declaration says things that are the 16 opposite of what I told the Clark lawyers at our 17 meeting. 18 Do you see that? 19 A. Yes. 20 Q. Did you conduct any investigation by 21 reviewing depositions or other declarations to 22 determine whether any of the -- any of the 23 declarations that you rely on, whether any of 24 the declarants believe that they were told</p>	<p style="text-align: right;">Page 119</p> <p>1 copy of this, but I'll mark it for you. 2 (WHEREUPON, DUDNEY Deposition 3 Exhibit Nos. 005-006 were 4 marked for identification.) 5 BY MR. DUTTON: 6 Q. I've just handed you what's been marked 7 as Exhibit 005 which is a copy of the 8 declaration of Joshua Merrill, his first one. 9 Can you tell me what -- on what date Mr. Merrill 10 signed that declaration? 11 A. It's December 12th, 2011. 12 Q. And now I'm going to hand you what's 13 been marked as Exhibit 006 which is a second 14 affidavit or a declaration of Mr. Merrill. 15 What's the date of that? 16 A. April 14th, 2015, which is what I was 17 looking for, because it's not included in my 18 table because it came out after the issuance of 19 my report. I issued my report on March 27th and 20 this came out on April 14th. 21 Q. Right. So the only -- the only one 22 that you relied on for Mr. Merrill is the one 23 that you -- that was taken by plaintiff's 24 counsel, right?</p>
<p style="text-align: right;">Page 118</p> <p>1 things or told the Clark's lawyers things at 2 their meeting, that were the opposite of their 3 declaration? 4 A. I don't know that I can say it was the 5 opposite, because Mr. Merrill, who is included 6 in my -- in my table is somebody who has two 7 declarations in it where his second declaration 8 I would say modifies, for lack of a better term, 9 the statements in his view that he made in his 10 first declaration. 11 Q. And you don't cite the second 12 declaration in your Table 1, do you? You just 13 cite the first one. 14 A. Well, let me look here real quick. 15 Q. Why don't you refer to Footnote 53, 16 Mr. Dudney, where you cite to the Merrill report 17 or the Merrill declaration -- or 52. 18 A. Well, 53 is a cite to the declaration. 19 What I'm looking for is to see if I can find the 20 date of his second one. I don't know if you 21 have that handy, it might save me a step here. 22 Q. Well, let me suggest that 53 is wrong 23 because his initial declaration was 24 December 12th, 2011, and I don't have an extra</p>	<p style="text-align: right;">Page 120</p> <p>1 A. It's the only one I cited. I don't -- 2 it's -- again, it provided -- he said what he 3 said and he made certain statements and I was 4 then looking at the data and he was not the only 5 one I cite. I cite 11 or 12 others. 6 Q. Isn't it true, Mr. Dudney, that each of 7 the declarations that you cite were the 8 declarations taken by plaintiff's counsel in 9 this case? 10 A. They may be, but as I testified to 11 earlier, I didn't select them on that criteria. 12 I selected them based on declarants that had 13 made either admissions or other statements which 14 were ones that would be the jumping off point, 15 if you will, for the forensic analysis that 16 I did of the Yardi data. 17 Q. And the other one that you didn't cite 18 that was taken by plaintiff's counsel was the 19 deposition of Alanso Arias, right -- or sorry, 20 the declaration of Alanso Arias. 21 A. I'm sorry. What was the question? 22 Q. You don't include that in Table 1, do 23 you? 24 A. No. No, Mr. Arias is not included.</p>

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<p style="text-align: right;">Page 121</p> <p>1 And whenever it's a good time for a 2 break, we're a little over an hour. 3 Q. And you didn't include Mr. Arias in 4 Table 1 because at his deposition, he completely 5 recanted the declaration that he gave 6 plaintiff's counsel? 7 A. I'd have to go back and look at his 8 deposition. I just don't recall whether that's 9 -- if it is exactly as you just described it or 10 not. I would have to go back and look at it. 11 Q. And that was the reason you didn't 12 include him, right? 13 A. I don't recall making a conscious 14 decision based on what you're describing here. 15 Generally, I understood that there were sort of 16 three categories of people, there were ones that 17 made statements that said they either did X or 18 knew of X and X was something, you know, that 19 might be viewed as improper. There were people 20 that said the opposite, never did X, no one ever 21 did X, there was nothing improper. Then you had 22 people in the third category that said some 23 things and then maybe issued a second statement 24 or clarified or augmented their statements in</p>	<p style="text-align: right;">Page 123</p> <p>1 MS. WELCH: Objection to form. 2 THE WITNESS: Well, I'm not accusing anyone 3 of manipulating data. I'm simply looking at the 4 data and determining what it says and presenting 5 that, presenting how I did that analysis, so 6 that, you know, Mr. George or others can provide 7 his view on it. 8 BY MR. DUTTON: 9 Q. Well, you call it manipulation in your 10 report. 11 A. I think that's the nature of the 12 allegations are that there was manipulation of 13 work order data, so that's why I entitled it 14 that way, but as you see, if you read the 15 sections which I'm sure you have, you know that 16 what I've done is analyze just an enormous 17 amount of data to determine whether or not some 18 of these allegations or statements, whether 19 there is -- those are consistent with the data 20 that I was asked to analyze. 21 Q. Well, isn't manipulation of work order 22 data one of your conclusions and opinions? 23 A. I think that what I found is consistent 24 with that, those sets of allegations, that there</p>
<p style="text-align: right;">Page 122</p> <p>1 deposition testimony or otherwise. I'm not 2 making judgments about any of these groups of 3 people. I'm simply identifying that there are 4 certain individuals that made certain 5 allegations or said they did certain things and 6 I'm generally looking at those allegations from 7 a data perspective, and so I don't recall 8 specifically why I chose not to include 9 Mr. Arias, but -- but the reasons I included the 10 ones I did was for the reasons that I stated. 11 Q. And what reasons were that again? 12 A. Contextual background because there 13 were allegations that were being made and I was 14 being asked to analyze Yardi data to determine 15 whether or not there was, you know, evidence in 16 the Yardi data which would be consistent with 17 the statements that were being alleged or the 18 people admitted that they were, you know, doing 19 certain things. I was trying to ascertain 20 whether or not the data was consistent or 21 inconsistent with that. 22 Q. Were you ever concerned that you would 23 accuse people of manipulating data if it wasn't 24 true?</p>	<p style="text-align: right;">Page 124</p> <p>1 was -- that the data evidences to me that work 2 order data was -- was, in fact, manipulated. 3 Q. And you say that this is an impropriety 4 which you found, right? 5 A. I think the data supports that, yes. 6 Q. Okay. And my question was, Mr. Dudney, 7 before you reached the conclusion or the opinion 8 that there was work order manipulation and that 9 this was an impropriety, were you concerned at 10 all about unfairly accusing people of this 11 manipulation and impropriety? 12 A. No. Again, because I'm not -- I'm not 13 accusing any -- any specific individual. The 14 data is what it is. I'm doing the analysis that 15 the data allows me to do, and so to the extent 16 that there are certain individuals that, you 17 know, the data might say otherwise. At the end 18 of the day, that's for a Court to determine 19 whether or not that that -- that evidence that 20 I've identified through my analyses, whether 21 that, along with everything else that's 22 presented in the case and the argument, whatever 23 the Court's going to conclude, the Court's going 24 to conclude, but from a data perspective which</p>

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<p style="text-align: right;">Page 125</p> <p>1 is the way I look at it, I understood there were 2 allegations. I was tasked with analyzing the 3 data, I did that. The data would be consistent 4 with certain of the allegations. That's where I 5 am. 6 MR. DUTTON: All right. We can take a break. 7 THE WITNESS: Thanks. 8 THE VIDEOGRAPHER: This marks the end of DVD 9 No. 2. We are off the record at 11:37 a.m. 10 (WHEREUPON, a short break was 11 taken.) 12 THE VIDEOGRAPHER: Here begins DVD No. 3. We 13 are on the record at 11:49 a.m. 14 BY MR. DUTTON: 15 Q. Mr. Dudney, before you -- before you 16 reached your conclusions in this case about work 17 order manipulation or manipulation of work order 18 response times, what work did you do to 19 understand the Yardi software? 20 A. Well, Yardi has been something that 21 I've been involved with since the Benning and 22 Belvoir cases, and so it's been a continuing 23 process on the part of my -- me and my team with 24 respect to Yardi. So we have talked with people</p>	<p style="text-align: right;">Page 127</p> <p>1 to ask me that as -- I would answer it as I just 2 did which is that I don't know that I've done 3 any analysis that is going towards intent. I'm 4 simply looking at what did or did not happen 5 with respect to the data in light of the 6 allegations or statements that people made. I 7 think intent to me is a legal term that the 8 Courts will determine whether or not there was 9 intent. 10 Q. Well, I don't think I was asking about 11 whether or not the Courts were going to -- 12 doesn't the word itself, manipulation, connote 13 intent? I'm asking you about the King's English 14 or the Queen's English. 15 A. If it does, it wasn't my intention. My 16 intention was not to convey intent with respect 17 to that. It was whether or not something was 18 done improperly or not, based on the data 19 whether -- whether -- regardless of whether the 20 person intentionally did it or somehow otherwise 21 did it, I don't think that was part of the 22 analysis. 23 Q. Did you ever see in your analysis or in 24 your review instances where somebody updated</p>
<p style="text-align: right;">Page 126</p> <p>1 at Yardi. We've obviously analyzed the data 2 itself and we were, depending on the time 3 period, you know, receiving reports or 4 affidavits that were coming from primarily 5 Mr. George, and so we would review those as 6 well. But it was based on a compilation of 7 statements made by individuals that worked on 8 the projects. 9 In some instances, we -- this was the 10 subject of interviews that I conducted. We held 11 conversations with individuals at Yardi and then 12 obviously, we analyzed the data, because you can 13 see in the data and/or both the current data and 14 the backup data would help inform as to how -- 15 how Yardi worked with respect to the data that 16 was being filled out in certain forms and 17 reports and so forth, so I did all of those. 18 That process is sort of an ongoing thing that we 19 did throughout the analysis that I conducted. 20 Q. Do you agree with me that the word 21 manipulation connotes intent? 22 A. I don't think I could testify to that. 23 I'm certainly not testifying about intent or 24 opining on people's intent, so if -- if one were</p>	<p style="text-align: right;">Page 128</p> <p>1 Yardi and the effect of that update was not the 2 result they were hoping to get? 3 A. I'm not sure I understand the question. 4 Let me ask to have that read back, please. 5 (WHEREUPON, the record was read 6 by the reporter as requested.) 7 THE WITNESS: I'm not -- I'm not sure I can 8 answer that question because I don't know that I 9 can say -- I'm just trying to think of an 10 instance where somebody was hoping to get a 11 certain outcome, and that I somehow knew that 12 and yet the update that they made, didn't 13 achieve that outcome, so I'm not -- there may be 14 instances where I could find transactions where 15 I would have e-mails or other data which might 16 inform me with respect to the person's intent 17 and whether they were successful in achieving 18 what they were trying to do. I certainly see 19 instances where, you know, there was interaction 20 between individuals around trying to increase 21 the pass/fail rate and the pass portion of that 22 rate, and then achieving that through changes 23 made to the system, but I don't know that 24 I could say or identify a specific transaction</p>

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<p style="text-align: right;">Page 129</p> <p>1 that would comport with the way you just</p> <p>2 articulated your question.</p> <p>3 BY MR. DUTTON:</p> <p>4 Q. Did you ever see instances where</p> <p>5 somebody had updated work order information in</p> <p>6 Yardi and were confused as to why the particular</p> <p>7 work order remained a pass or remained a fail on</p> <p>8 the pass/fail report?</p> <p>9 MS. WELCH: Objection to form.</p> <p>10 THE WITNESS: I've seen instances where</p> <p>11 people have -- it -- it appears that work orders</p> <p>12 have been -- data have been changed, some of</p> <p>13 those changes might not, depending on what the</p> <p>14 change was, have an affect on the pass/fail</p> <p>15 report, for example, but they were changed --</p> <p>16 the data changed nonetheless between the backup</p> <p>17 and the -- and the current state of Yardi so</p> <p>18 that -- you know, we might have to get more</p> <p>19 specific, but that might be an example that</p> <p>20 would, I think, fit the criteria that you just</p> <p>21 laid out.</p> <p>22 BY MR. DUTTON:</p> <p>23 Q. Did you -- did you see any situations</p> <p>24 where, during the use of the Yardi database,</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. And he did -- he did that because that</p> <p>2 was what he was trained to do, right?</p> <p>3 A. I don't know if he -- if he says that</p> <p>4 he was trained to do it that way, I do know that</p> <p>5 he says that he did that particularly as it</p> <p>6 relates to the labor tab, I've seen instances</p> <p>7 where he's done that.</p> <p>8 Q. And as a result of that, the -- the</p> <p>9 start time that's reflected in the pass/fail</p> <p>10 report that's used to compute response time as</p> <p>11 we refer to it, reflects the time that the work</p> <p>12 order was changed to the in progress status,</p> <p>13 right?</p> <p>14 A. Assuming that there's nothing in the</p> <p>15 actual fields of the labor tab, that would be</p> <p>16 correct, because the second criteria of the</p> <p>17 pass/fail report typically goes through the in</p> <p>18 progress time.</p> <p>19 Q. Have you verified that that is, in</p> <p>20 fact, how the pass/fail report works?</p> <p>21 A. Yes.</p> <p>22 Q. When did you do that?</p> <p>23 A. I don't know specifically when that</p> <p>24 took place, but we -- I know it's been done</p>
<p style="text-align: right;">Page 130</p> <p>1 people were entering data in fields that</p> <p>2 resulted in an improper computation of response</p> <p>3 time in the pass/fail report?</p> <p>4 A. Yes, I believe there are examples. I</p> <p>5 think, you know --</p> <p>6 Q. Can I give you an example?</p> <p>7 A. Please.</p> <p>8 Q. So are you aware that, for example at</p> <p>9 Monterey, on many occasions, the handwritten</p> <p>10 work order time is entered into Yardi reflecting</p> <p>11 when the -- the particular maintenance tech</p> <p>12 started working at a particular unit and</p> <p>13 finished, was entered into the -- what's called</p> <p>14 the scheduled -- the scheduled start and finish</p> <p>15 time?</p> <p>16 A. Of the labor tab, yes.</p> <p>17 Q. Okay.</p> <p>18 A. Mr. Merrill testifies to that.</p> <p>19 Q. And do you understand that -- well, did</p> <p>20 Mr. Merrill also indicate that when he used</p> <p>21 Yardi, he would set the status to in progress,</p> <p>22 for example in the morning, when he was handing</p> <p>23 out the work orders to his techs?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 through the subject of conversation and</p> <p>2 discussion with AlixPartners for some time.</p> <p>3 Q. Was it after Mr. George's first</p> <p>4 declaration in the California case?</p> <p>5 A. I don't recall the timing of it.</p> <p>6 Q. Now, are you also aware of</p> <p>7 circumstances where a printed work order has</p> <p>8 printed start time and finish times in the upper</p> <p>9 left-hand corner?</p> <p>10 A. You're saying a screen print or a</p> <p>11 print?</p> <p>12 Q. A printed work order, not a screen</p> <p>13 print.</p> <p>14 A. Not a screen print. There are -- there</p> <p>15 are in the left-hand side -- I always call them</p> <p>16 in the upper left-hand corner, but they're in</p> <p>17 the left-hand side of the document that, yes,</p> <p>18 there can be start times that are included.</p> <p>19 Q. And finish times, too, right?</p> <p>20 A. Yes, there can be.</p> <p>21 Q. And do you know how those particular</p> <p>22 fields on the printed work orders are populated?</p> <p>23 A. Depends on the -- generally, as</p> <p>24 I understand it, the -- the -- if the -- if and</p>

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<p style="text-align: right;">Page 133</p> <p>1 when the work order was put into a start status, 2 that was also a status that was available, there 3 is then a start time that can be -- populate 4 that work order field and you would find that -- 5 depending on the time period, you would find 6 that in either the downloaded field, in the work 7 order history or it might show up in the start, 8 again, depending on the time period. The finish 9 time, I believe, I'd have to check this, but I 10 believe it comes from the scheduled finish time. 11 Q. Are you also aware that if the work 12 order status has been changed to work completed, 13 that a time will show up in the finish time? 14 A. Yes. 15 Q. A printed time as opposed to a 16 handwritten time? 17 A. Correct. 18 Q. And do you agree that if there is a 19 printed work order with a printed start time and 20 a printed finish time, both of which have been 21 crossed out and a new start and new finish times 22 have been entered in, do you agree that for that 23 particular work order, that is an indication 24 that someone, before handing the work order out,</p>	<p style="text-align: right;">Page 135</p> <p>1 with respect to Yardi, with respect to the 2 software, with respect to the data fields, that 3 he doesn't have it right? 4 A. There's not one that I'm thinking of 5 right now that -- where our conclusion was based 6 on the work we had done and the discussions that 7 we had had and looking at scripts and different 8 things, that it was different than what 9 Mr. George had done in terms of the operation of 10 it, given your caveat. I think the answer is 11 no, I mean, the only caveat I would put in -- 12 unless I've included it, and I'm just not 13 thinking of one right now, where either in my 14 March 27th report or my June 5th rebuttal report 15 that I had mentioned that, but I think -- my 16 best recollection is that we didn't take any 17 issue with the technical operation of it from 18 the way Mr. George articulated it. 19 Q. Okay. And with respect to -- let's 20 take a look at Sections B and C of your -- of 21 Section 2 of your report. It's on page -- 22 A. 21. 23 Q. 21, 22, 23. 24 A. Yes.</p>
<p style="text-align: right;">Page 134</p> <p>1 had changed the status to work completed? 2 A. I'd have to check to see if it -- if 3 the status had to change in order for that to be 4 populated, but -- but nonetheless, there are 5 instances where those times are crossed out and 6 then the actual times are put in. 7 Q. And there are instances where -- after 8 there's already been a response to a work order, 9 that same work order is printed out again with a 10 printed start time and a printed finish time and 11 handed back out to the techs who go back to the 12 home? 13 A. Could happen. 14 Q. Let's talk about your -- have you -- 15 have you reviewed Mr. George's declaration from 16 2012 and his expert report? 17 A. Yes. 18 Q. Are there any technical issues about 19 Yardi database or Yardi software that you 20 believe Mr. George is incorrect about? 21 I'm not asking you to agree with any of 22 his interpretations. 23 A. No, I understand. 24 Q. But are there any places where you say</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. This is your -- you call it a hard copy 2 work order production analysis? 3 A. Correct. 4 Q. And your hard copy paper work order 5 comparison to final pass/fail report analysis, 6 right? 7 A. Yes, for C. 8 Q. During your forensic analysis, 9 Mr. Dudney, did you make an assumption that 10 there would be a hard copy paper work order for 11 every single work order at Monterey? 12 A. I didn't make an assumption one way or 13 the other. It was either -- either it existed 14 or it didn't -- did not exist. 15 Q. Did you ever look and see or conduct an 16 investigation into the practices that either -- 17 for Irwin or Monterey during the periods of time 18 when those projects were attempting to use PDAs 19 or personal digital -- 20 A. I was aware of the existence of the 21 PDAs prior to stepping onto either Fort Irwin or 22 Monterey, just because I was aware of it from 23 the Benning and Belvoir projects, and so I -- in 24 doing the analysis that I did, I was aware that</p>

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<p style="text-align: right;">Page 137</p> <p>1 the PDA device existed and that it was attempted 2 to have been used for a period of time, and from 3 what I understand from various declarations or 4 deposition testimony, that there were similar 5 issues experienced with respect to the PDAs not 6 updating Yardi for the period of time that the 7 PDAs were used, which was I think more a 8 compressed time period, shorter from what 9 I could garner as compared to what had happened 10 out east. 11 Q. Well, did -- that was going to be my 12 next question. Did you ever go back into the 13 documents or did you ever -- during any of your 14 interviews or your declarations that you relied 15 on, attempt to find out during what months or 16 what periods of time the Irwin project 17 maintenance department used PDAs or the Monterey 18 maintenance department used PDAs? 19 A. We attempted, through interview 20 questions, again, reviewing depositions and 21 other things, to get a handle on what those time 22 periods were, and I don't know that ultimately 23 that there is a -- sort of necessary definitive 24 -- either piece of testimony or documents that I</p>	<p style="text-align: right;">Page 139</p> <p>1 to have a handheld device that allowed for, in 2 theory, a more efficient interaction between the 3 maintenance technician and what I will call the 4 central sort of maintenance office in terms of 5 the dispatch, and, you know, doing what was 6 required for the residents, so I understood 7 conceptually that that was a different process 8 than the printing out of the work orders and 9 writing on the work orders, as then became the 10 standard after the PDAs were -- were no longer 11 used, but I didn't attempt to do a correlation 12 analysis or otherwise establish a relationship 13 to the availability of hard copy documents as 14 compared to when the PDAs were and were not in 15 use. 16 Q. Okay. Did you ever conduct a review of 17 e-mails that had been produced in this case to 18 kind of get a sense of when the PDAs were -- 19 were being used? 20 A. Certainly, have -- have looked at a lot 21 of information that's not just Yardi and so 22 e-mails, Excel files, other things that are 23 produced, so yes, we've seen some of them. I 24 don't know that I could testify that I have</p>
<p style="text-align: right;">Page 138</p> <p>1 can point to that would say that precisely from 2 A to B it was used, and from, you know, C to D, 3 it was not, other than to say that the general 4 gist of the testimony as I recall it was that 5 they were used for a shorter period of time 6 earlier in the project than, say, what the 7 experience I had at Benning and Belvoir, but I 8 don't know that there is a bright line 9 definitive document that I could point to that 10 would tell me exactly that, the month that the 11 PDA stopped being used. 12 Q. Did you ever attempt to analyze whether 13 there was a correlation between the use of PDAs 14 and the availability of hard copy work orders? 15 A. I haven't done an analysis like that. 16 Q. Never attempted that? 17 A. Not that I recall. 18 Q. Do you recall any testimony or any 19 declarations or any of your interviews where you 20 have attempted to ask whether there was a 21 correlation between PDA use and the lack of hard 22 copy paper work orders? 23 A. Well, I -- I knew the function of the 24 PDA which was to -- at least at some level, was</p>	<p style="text-align: right;">Page 140</p> <p>1 seen, you know, every last piece of paper that 2 deals with when the PDAs were and weren't being 3 used. 4 Q. Well, you've looked a lot at the 5 accounting side of the Pinnacle of these 6 projects, right? 7 A. Yes, for certain cost categories. 8 Q. Do you have the general ledgers? 9 A. Yes, I do have the general ledgers and 10 so for certain cost categories, I've got -- I've 11 gone deep into those. 12 Q. PDAs would have been a cost that would 13 have been charged to the project, right? 14 A. I presume so. 15 Q. Did you -- did you attempt to look at 16 the general ledgers and ascertain when the PDAs 17 were being paid for? 18 A. Yeah, I'm not sure one could do that, 19 maybe you can, but no, I haven't done an 20 analysis of the general ledger to try and see if 21 that provides any additional detail or not. 22 Q. Does it make sense to you that there 23 would be fewer hard copy paper work orders 24 available for review if PDAs were being used?</p>

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<p style="text-align: right;">Page 141</p> <p>1 A. I think it's possible. I don't know if 2 I can testify any more to that, but I think the 3 nature of the PDA as I understood it was to rely 4 on technology as a way to do it as opposed to 5 the paper system that's being used now. 6 Q. Does it make sense to you that for the 7 same work order, if somebody was attempting to 8 use PDAs but for some reason the PDAs weren't 9 working properly, that there might be a work 10 order response that was done with a PDA and no 11 corresponding paper work order and then a 12 subsequent work order response that was done via 13 a paper work order? 14 MS. WELCH: Objection to form. 15 THE WITNESS: Let me make sure I understand 16 your question. Are you asking me if -- for the 17 same incident, there could be two responses, one 18 that was facilitated or circulated around the 19 use of a PDA and a separate repetitive response 20 that was then done by paper? Are you asking me 21 if that's possible? 22 BY MR. DUTTON: 23 Q. Yes. 24 A. I presume it is possible. Again, I</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. And 97,500 paper work orders from 2 Monterey, right? 3 A. Yes. 4 Q. I'm not good with math, but would you 5 agree with me that that's roughly 190,000 paper 6 work orders? 7 A. Yes. 8 Q. You've said you've located over 700 9 paper work orders. Did you identify every 10 single paper work order you could where the 11 handwritten times did not correspond with the 12 data either in the annual pass report or in the 13 Yardi system? 14 THE WITNESS: Let me ask to have that one 15 read back, please. 16 (WHEREUPON, the record was read 17 by the reporter as requested.) 18 MS. WELCH: Objection, form. 19 THE WITNESS: I'm not -- 20 BY MR. DUTTON: 21 Q. Well, you say you're reviewed a 22 selection of produced hard copy work orders -- 23 A. Correct. 24 Q. -- for the Monterey and CMC projects?</p>
<p style="text-align: right;">Page 142</p> <p>1 don't know that I've seen an instance of it, but 2 I -- it could be possible. 3 Q. Okay. Now, in your -- in your report, 4 you say there -- you identify 700 instances, I 5 think you say of situations where the paper work 6 order produced by Pinnacle does not agree with 7 the corresponding data in the annual pass/fail 8 report or the Yardi system, and I just want to 9 clarify what you mean by that. 10 When you say 700 paper work orders 11 produced by Pinnacle with start times 12 handwritten by the maintenance technician -- 13 A. And are you reading from a particular 14 page? 15 Q. Yes, Page 23. 16 A. Okay. I just want to follow along with 17 you. 18 Q. Page 23. Now -- now, you've identified 19 -- let's see, 76,970 paper work orders from Fort 20 Irwin, right? 21 A. Yes. 22 Q. And 17,267 paper work orders from 23 Moffett and Parks, right? 24 A. Yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Correct. 2 Q. Okay. And you come up with over 700 3 paper work orders where you say the 4 corresponding data in the annual doesn't match 5 the data in the annual pass/fail report of the 6 Yardi system? 7 A. Or the Yardi system, correct. 8 Q. Or the Yardi -- might match one or the 9 other? 10 A. Typically, no, because typically, the 11 pass/fail report, except maybe in the case of a 12 hard coded pass would be reflected in the Yardi 13 system currently, and that's Yardi current as 14 opposed to Yardi backup. 15 Q. My question really was: How did you 16 come about -- or how did you come up with this 17 selection of 700 or so work orders? 18 A. Reviewing the individual work orders, 19 first of all to identify the population of the 20 ones produced that had handwriting on them that 21 would evidence start and stop times and then 22 based on that population, there were manual 23 reviews that were done of those work orders to 24 then identify ones that did not agree with the</p>

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<p style="text-align: right;">Page 145</p> <p>1 pass/fail report or the Yardi system and that</p> <p>2 the documents themselves, with the handwriting,</p> <p>3 would provide one answer and again, that answer</p> <p>4 in terms of start and stop time would be</p> <p>5 different than what's included in Yardi and that</p> <p>6 there wasn't -- that I wasn't able to find some</p> <p>7 other reason that might, you know, reasonably</p> <p>8 explain based on the evidence that I had, which</p> <p>9 included Yardi backup in some cases, backup</p> <p>10 electronic files, Yardi current, pass/fail</p> <p>11 report data and then the hard copy work orders</p> <p>12 themselves, and in some more limited cases, I</p> <p>13 had e-mails and/or Excel files which related to</p> <p>14 that.</p> <p>15 I will also say that to the extent that</p> <p>16 I could identify it, I also sought to look at</p> <p>17 tracking logs, other sheets of paper that might</p> <p>18 have data with respect to a work order number</p> <p>19 that might again inform one with respect to the</p> <p>20 evaluation of these, so it was a process,</p> <p>21 Mr. Dutton, of culling through the work orders</p> <p>22 to identify those that appear to be inconsistent</p> <p>23 between the paper work order and what the</p> <p>24 technician wrote and what was recorded in</p>	<p style="text-align: right;">Page 147</p> <p>1 but it's just over 700 and it's roughly 140 and</p> <p>2 560 between the two.</p> <p>3 Q. 140 and 560?</p> <p>4 A. I think that's right.</p> <p>5 Q. 140 at Fort Irwin?</p> <p>6 A. Correct.</p> <p>7 Q. And 560 at --</p> <p>8 A. Monterey.</p> <p>9 Q. -- Monterey?</p> <p>10 A. Correct.</p> <p>11 Q. And did you do -- did you do any work</p> <p>12 to determine the context in which these paper</p> <p>13 work orders and -- where there were work orders</p> <p>14 that -- where the paper work orders didn't match</p> <p>15 the information in Yardi, did you do any</p> <p>16 background work to look at the context of those</p> <p>17 work orders?</p> <p>18 A. Help me with what you mean by context.</p> <p>19 Q. Well, let's -- let's take Fort Irwin</p> <p>20 for an example.</p> <p>21 Now, you are aware that Fort Irwin did</p> <p>22 not always use the pass/fail report.</p> <p>23 A. They had their own derivation of it</p> <p>24 which is separate from the Yardi programmed one</p>
<p style="text-align: right;">Page 146</p> <p>1 pass/fail and I haven't been able to identify an</p> <p>2 explanation for that based on the evidence that</p> <p>3 has been provided.</p> <p>4 Q. Okay. And I guess my -- my question</p> <p>5 was more aiming at the scope of the paper work</p> <p>6 orders that you reviewed.</p> <p>7 Did you review all of the paper work</p> <p>8 orders that you were able to identify?</p> <p>9 A. Yes.</p> <p>10 Q. And did you then divide that into a</p> <p>11 subset of all of the paper work orders that had</p> <p>12 handwritten times and dates?</p> <p>13 A. Yes. We had identified those that had</p> <p>14 that characteristic.</p> <p>15 Q. And then is the resulting 700 or over</p> <p>16 700 -- what's the exact number?</p> <p>17 A. It is -- it is just over 700. It's a</p> <p>18 few -- it's a handful over 700.</p> <p>19 Q. Okay. Does that break down to</p> <p>20 something like 545, isn't it just under 700?</p> <p>21 A. No. I think it's just -- I think it's</p> <p>22 just a tad over 700. I want to say right now,</p> <p>23 it's -- I want to say 702 or something like</p> <p>24 that, I could be wrong, it's subject to check,</p>	<p style="text-align: right;">Page 148</p> <p>1 where they reported -- if that's what you mean,</p> <p>2 they reported results using something for a</p> <p>3 period of time called a matrix as an example</p> <p>4 which is not the pass/fail report.</p> <p>5 Q. Are you aware that they used a report</p> <p>6 called the work order completion summary report</p> <p>7 that presented the average response times for</p> <p>8 each category of work orders?</p> <p>9 A. Yes, that's what I'm referring to as</p> <p>10 the matrix. That matrix presents an on average</p> <p>11 basis for a certain period of time.</p> <p>12 Q. And they used that matrix, if you will,</p> <p>13 for -- to support their -- Pinnacle's incentive</p> <p>14 fees for the first incentive fee period at Fort</p> <p>15 Irwin from March of 2004 through February</p> <p>16 of 2005.</p> <p>17 A. Sounds right.</p> <p>18 Q. And -- and it wasn't until the first</p> <p>19 quarter of 2006 that Pinnacle began to pull</p> <p>20 together support for the work order response</p> <p>21 time portion of its incentive fee for the 2005</p> <p>22 period.</p> <p>23 A. I'd have to check that, but just</p> <p>24 conceptually, that sounds right to me.</p>

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<p style="text-align: right;">Page 149</p> <p>1 Q. And isn't it the case that most of the</p> <p>2 updates, most of the 140 that you rely on for</p> <p>3 Fort Irwin -- in fact, I think all but about 25</p> <p>4 of those -- strike that.</p> <p>5 All of the updates that relate to Fort</p> <p>6 Irwin specifically as opposed to Moffett</p> <p>7 occurred prior to April 6th, 2006 --</p> <p>8 A. I will tell you.</p> <p>9 Q. -- out of the 140 and --</p> <p>10 A. What was your -- what was your</p> <p>11 operative date?</p> <p>12 Q. April 6, 2006.</p> <p>13 A. April 6, 2006. When you say occurred,</p> <p>14 just to get -- just to make sure I understood</p> <p>15 your question correctly, you're talking about</p> <p>16 the -- the --</p> <p>17 Q. There's a last updated by date.</p> <p>18 A. That's the one that you're -- that's my</p> <p>19 question, whether it was the start date or the</p> <p>20 last updated by date.</p> <p>21 Q. Okay. The last updated by date.</p> <p>22 A. And April 6 --</p> <p>23 Q. April 6, 2006.</p> <p>24 A. Yeah. Just doing a quick scan of my</p>	<p style="text-align: right;">Page 151</p> <p>1 the left, that has the last updated date, right?</p> <p>2 A. It -- technically, it's the fourth</p> <p>3 because I have just a sequence number running</p> <p>4 down which is the first, so it's one, two,</p> <p>5 three, fourth, if you start with, for example,</p> <p>6 I'm on Page 3 of 4, the Line 90, you would see</p> <p>7 that it's 90 and then work order number and last</p> <p>8 updated by, the last updated date, so that's</p> <p>9 what I understand that -- that to be Yardi data</p> <p>10 reflecting that information.</p> <p>11 Q. Okay. And is there anything -- is the</p> <p>12 sequence by date order?</p> <p>13 A. No, the sequence is by number of</p> <p>14 observations, I believe, with respect to the</p> <p>15 last updated by individual and then work order</p> <p>16 number within that individual.</p> <p>17 Q. Okay. With respect to all of the Irwin</p> <p>18 work orders, there's a -- there's another column</p> <p>19 that identifies whether or not the work order</p> <p>20 was at Irwin or at Moffett, right?</p> <p>21 A. Yes, it's the tenth column from the</p> <p>22 left, sort of in the center of the page, it says</p> <p>23 Irwin/Moffett and it denotes which location it</p> <p>24 was.</p>
<p style="text-align: right;">Page 150</p> <p>1 Exhibit 6 to what is -- you've marked as</p> <p>2 Exhibit 001, even though your marked version of</p> <p>3 Exhibit 001 doesn't have Exhibit 6 in it. I</p> <p>4 have my own copy of that same report so I'm just</p> <p>5 looking at Exhibit 6 and looking under the last</p> <p>6 updated date, and all of those last updates</p> <p>7 occurred before April 6th, 2006, just based on a</p> <p>8 quick sort of running my finger down the column</p> <p>9 sort of review.</p> <p>10 Q. Well, let me do this, just so we have</p> <p>11 it in the record. I will mark as Exhibit 008 a</p> <p>12 copy of Exhibit 6 from your report.</p> <p>13 Can you tell me if that is a true</p> <p>14 reproduction of Exhibit 6?</p> <p>15 (WHEREUPON, DUDNEY Deposition</p> <p>16 Exhibit No. 008 was marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: It appears to be just done with</p> <p>19 smaller typing.</p> <p>20 BY MR. DUTTON:</p> <p>21 Q. Yeah, sorry about that.</p> <p>22 A. But no, it appears to be complete.</p> <p>23 Q. So -- and if I wanted to look, there's</p> <p>24 a column, it's the one, two -- third column from</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. And the last date I think for the Irwin</p> <p>2 update was April 6th, 2006, right?</p> <p>3 A. I think the last one that I saw was</p> <p>4 April 5th, but maybe there's -- actually -- and</p> <p>5 this was for -- I'm sorry 2006, let me just</p> <p>6 double-check. And it's actually -- I misspoke</p> <p>7 earlier, it's sorted by last updated by name,</p> <p>8 not by the number of occurrences, so it goes</p> <p>9 H. Hernandez first, J. Vinson and Lopez, et</p> <p>10 cetera, and then within that is work order.</p> <p>11 The last one that I see,</p> <p>12 Mr. Dutton, is April 5th of 2006, in the Irwin</p> <p>13 population.</p> <p>14 Q. Right.</p> <p>15 A. There's a couple at the top of Page 2</p> <p>16 of 4 on what you've marked as Exhibit 008</p> <p>17 associated with Midi Lopez.</p> <p>18 Q. So there was -- there were none after</p> <p>19 April 6?</p> <p>20 A. There were none that I've included on</p> <p>21 Exhibit 6 that are after April 6th.</p> <p>22 Q. And with respect to the updates by</p> <p>23 Ms. Lopez, it's correct, is it not, that there</p> <p>24 are a number of updates that take place in late</p>

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<p style="text-align: right;">Page 153</p> <p>1 March and early April of 2006.</p> <p>2 A. Yes.</p> <p>3 (WHEREUPON, DUDNEY Deposition</p> <p>4 Exhibit No. 007 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. DUTTON:</p> <p>7 Q. Let me show you what's been marked as</p> <p>8 Dudney Exhibit 007, which is a compilation of</p> <p>9 e-mails to and from Ms. Lopez beginning in</p> <p>10 February of 2006.</p> <p>11 A. Is it one continuous chain or is it</p> <p>12 just a series of --</p> <p>13 Q. It's a series of e-mails to and from</p> <p>14 Ms. Lopez during this period of time.</p> <p>15 A. Okay. Okay.</p> <p>16 Q. And with respect to the first page with</p> <p>17 Bates stamp ending in 581?</p> <p>18 A. Yes.</p> <p>19 Q. There's an e-mail from Ms. Lopez</p> <p>20 concerning a call that she just got from Rick</p> <p>21 Wimer.</p> <p>22 Do you see that?</p> <p>23 A. This is the one that begins, hey, just</p> <p>24 got a call from Rick Wimer?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. Got it. It's a page that's a</p> <p>2 February 13, 2006 e-mail?</p> <p>3 Q. Correct.</p> <p>4 A. From Miriam Lopez to Rick Wimer?</p> <p>5 Q. And the subject is pass/fail report,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. Have you seen that e-mail before?</p> <p>9 A. Let me just read it and see if it jogs</p> <p>10 my memory.</p> <p>11 I believe I have, but I'd have to</p> <p>12 double-check just to see if it's on the list of</p> <p>13 documents relied upon. There's obviously a huge</p> <p>14 volume of documents but...</p> <p>15 Q. She -- Ms. Lopez says: I started with</p> <p>16 December 2005 and had been working backwards,</p> <p>17 and then she gives a series of scores for</p> <p>18 December, November, October, September, August</p> <p>19 and July, right?</p> <p>20 A. Correct, uh-huh, uh-huh.</p> <p>21 Q. She gives a starting score -- or a</p> <p>22 score and then a now score, right?</p> <p>23 Do you see that?</p> <p>24 A. Uh-huh.</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Correct.</p> <p>2 A. Okay. If you don't mind, can I just</p> <p>3 read that section?</p> <p>4 Q. Sure.</p> <p>5 A. Okay. I've read that, just that little</p> <p>6 portion, that little passage.</p> <p>7 Q. And this -- in this e-mail, Ms. Lopez</p> <p>8 is talking about the pass/fail report and the</p> <p>9 fact that, for certain types of work orders,</p> <p>10 COMs, the pass/fail report always prints out a</p> <p>11 star star review --</p> <p>12 A. Correct.</p> <p>13 Q. And gives only 50 percent credit</p> <p>14 instead of a one or a zero, right?</p> <p>15 A. Correct.</p> <p>16 Q. And she's asking if something can be</p> <p>17 done about that?</p> <p>18 A. Yes.</p> <p>19 Q. Correct?</p> <p>20 And then if you go forward a few pages,</p> <p>21 there's an e-mail with Bates stamp ending in 629</p> <p>22 AMSCAL1335469.</p> <p>23 Do you see that? About the fifth page</p> <p>24 in?</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And it looks like the -- the percentage</p> <p>2 or the fraction is changing in each instance</p> <p>3 from a number in the 70s, with the exception of</p> <p>4 July, which is at .63, to a number in the 90s in</p> <p>5 each of the corresponding months.</p> <p>6 A. Yes.</p> <p>7 Q. And then she gives an explanation and</p> <p>8 then she says: I am only changing the vendor,</p> <p>9 COM, star star and Microbio inspection to pass</p> <p>10 on my copy in the Excel files.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What do you understand that to mean?</p> <p>14 A. Well, that she is changing the --</p> <p>15 presumably to routine which is what the first</p> <p>16 e-mail that you pointed me to, is that she is</p> <p>17 presumably changing or referencing that she's</p> <p>18 changing anything that has a priority of vendor</p> <p>19 or COM, which is a turn, or star star to a --</p> <p>20 which is an appointment designation typically</p> <p>21 and something called Microbio inspection to a</p> <p>22 review -- or I'm sorry, to a routine.</p> <p>23 Q. So the --</p> <p>24 A. That that's what -- in combination with</p>

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<p style="text-align: right;">Page 157</p> <p>1 these two e-mails.</p> <p>2 Q. Let me -- let me ask you this: Do you</p> <p>3 believe that she is changing those to a routine</p> <p>4 in Yardi or do you believe that she is simply</p> <p>5 changing those to pass in an Excel file that she</p> <p>6 has downloaded to Yardi?</p> <p>7 A. Well --</p> <p>8 MS. WELCH: Objection to form.</p> <p>9 BY MR. DUTTON:</p> <p>10 Q. Because I would suggest the latter is</p> <p>11 what she's doing.</p> <p>12 A. I mean, she says, on the Bates page</p> <p>13 ending in 629, quote, I am only changing the</p> <p>14 vendor, in quotes, COM, in quotes, double star</p> <p>15 or double asterisk, in quotes, and Microbio,</p> <p>16 space, INSP, in quotes, to pass on my copy in</p> <p>17 the Excel files, and then she goes on to note,</p> <p>18 if the program was correct, these would</p> <p>19 automatically pass and the percentage would be</p> <p>20 correct on the Yardi side of these reports, so I</p> <p>21 would interpret that to mean that she is -- she</p> <p>22 is adjusting the Excel file. I would read that</p> <p>23 same way.</p> <p>24 Q. And not making changes to data in</p>	<p style="text-align: right;">Page 159</p> <p>1 PTE in fences?</p> <p>2 Q. Correct.</p> <p>3 A. Okay.</p> <p>4 Q. And you understand what PTE is, right?</p> <p>5 A. Permission to enter.</p> <p>6 Q. Correct. And she is writing to Wes</p> <p>7 Campbell.</p> <p>8 Do you know who he is?</p> <p>9 A. I believe that he is a maintenance</p> <p>10 director at some level. Let me just read if</p> <p>11 I could.</p> <p>12 Q. And do -- do you know who Jerry Vinson</p> <p>13 is?</p> <p>14 A. He may also be a -- I'd have to look on</p> <p>15 my list, but he may also be a maintenance -- a</p> <p>16 more senior maintenance person.</p> <p>17 Let me just read this real quick.</p> <p>18 Q. Okay. And I'm only going to ask you</p> <p>19 about the portion that is under PTE.</p> <p>20 A. Okay. I'll just read that piece.</p> <p>21 Okay. I have read just that portion</p> <p>22 under PTE.</p> <p>23 Q. Were you aware of this issue that on</p> <p>24 some occasions, POCs or service members who were</p>
<p style="text-align: right;">Page 158</p> <p>1 Yardi?</p> <p>2 A. This e-mail would not -- doesn't talk</p> <p>3 about making changes in Yardi, so I would not</p> <p>4 infer from this that this would suggest that --</p> <p>5 with respect to this e-mail, that she's changing</p> <p>6 items in Yardi.</p> <p>7 Q. And then on -- on the next page, there</p> <p>8 is an e-mail to Rick Wimer on the same date and</p> <p>9 this time, there are Excel spreadsheets</p> <p>10 attached --</p> <p>11 A. Yes.</p> <p>12 Q. -- for each of the months that are</p> <p>13 referred to in the prior e-mail; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And have you looked at those</p> <p>17 spreadsheets to see exactly what Ms. Lopez was</p> <p>18 doing?</p> <p>19 A. To the extent that they were produced</p> <p>20 as part of the production, we did.</p> <p>21 Q. Okay. Go forward to page -- Bates</p> <p>22 stamp AMSCAL06531067.</p> <p>23 Do you see that?</p> <p>24 A. 067. That's entitled -- the subject is</p>	<p style="text-align: right;">Page 160</p> <p>1 living in the units at Fort Irwin, would call in</p> <p>2 after a work order had been scheduled and grant</p> <p>3 permission to enter?</p> <p>4 A. I've heard of the instance occurring.</p> <p>5 Q. And procedurally or mechanistically, do</p> <p>6 you know how the Fort Irwin maintenance</p> <p>7 department handled that, as far as what</p> <p>8 information should be put into Yardi and updated</p> <p>9 for that person?</p> <p>10 A. Meaning, the specific instance of when</p> <p>11 it's called in after the fact, if a work</p> <p>12 order had -- if a resident is listed originally</p> <p>13 as having no PTE, and then they subsequently</p> <p>14 call in, what procedurally was supposed to</p> <p>15 happen in terms of the treatment of it? Is that</p> <p>16 what you're asking?</p> <p>17 Q. Correct. Yes.</p> <p>18 A. I don't know that I could testify what</p> <p>19 their procedural treatment was during the period</p> <p>20 of time that I reviewed, because I don't know if</p> <p>21 there was a consistent articulation of it.</p> <p>22 Q. Well, hypothetically, Mr. Dudney, if it</p> <p>23 had been an emergency or a -- if it had been an</p> <p>24 emergency or an urgent work order, do you</p>

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<p style="text-align: right;">Page 161</p> <p>1 understanding those require response in either 2 one hour or four hours? 3 A. Correct. 4 Q. If it had been one of those, and they 5 had been -- a tech had been dispatched to that 6 particular unit -- 7 A. Yes. 8 Q. -- but there was no PTE and the 9 resident called back and granted PTE 10 subsequently, in that instance, the -- the tech 11 would not actually start work at the unit, let's 12 say -- 13 A. When they -- 14 Q. -- within the period of time called for 15 by the incentive program, within one or four 16 hours. It could be longer than that? 17 A. It could be. In that instance, what 18 they were supposed to do, as I understand it, is 19 note on the work order that they would have 20 tagged their door indicating that they had been 21 there, and that if they did not PTE at the 22 time -- did not have PTE at the time that they 23 got there. 24 Q. But if subsequently, they were able to</p>	<p style="text-align: right;">Page 163</p> <p>1 during the day that they have errands to run, we 2 could resolve this issue. 3 Do you see that? 4 A. I -- I wasn't following along with you, 5 but I read that piece. So let me just reread it 6 here real quick. Oh, I see, if we are 7 granted PTE during the day -- I mean, yeah, 8 I see the -- so yes, I see what she says here. 9 Q. And so, if there was -- if PTE was 10 granted for an emergency or an urgent work order 11 but PTE was only granted in the afternoon, let's 12 say, and the work order were called in the 13 morning, would that be a pass? 14 A. If they responded based on the call 15 time, within the -- whenever the parameter was 16 for the priority of the work order, so if they 17 responded, but didn't gain access to it, the 18 first time that -- as I testified to a moment 19 ago, I understand that that response in tagging 20 the door and noting that effectuates a response. 21 Q. I've changed my hypothetical slightly. 22 A. Okay. 23 Q. Suppose that when the call is made, 24 that PTE is granted in the afternoon.</p>
<p style="text-align: right;">Page 162</p> <p>1 actually go back out and visit the unit, let's 2 say in the afternoon after PTE had been granted, 3 and they wrote down the time on the paper work 4 order that they started work and the time that 5 they responded to the work, shouldn't the work 6 order nevertheless be a pass, even though the 7 handwritten time was outside of the time 8 parameters of the incentive fee program? 9 A. My understanding of the application of 10 the incentive program metrics that are in the 11 PMA is that -- it would -- because they don't 12 have a completion time element, that would be 13 one reason why, that because of the first 14 response to attempt -- if they went and visited 15 within the -- either the one or four-hour 16 window, that that criteria then would be met, 17 they responded. That is, I think, tagging the 18 door is considered a response, and so for that 19 reason, they would pass under that scenario that 20 you just derived or articulated. 21 Q. Now, Ms. Lopez asks the -- she says in 22 the last -- in the middle paragraph, if you can 23 call it that: If they would grant PTE to enter 24 the yard or the quarters, instead of remembering</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Oh, I see. 2 Q. Call is made in the morning, I've got 3 an emergency work order. PTE is granted in the 4 afternoon. Under that circumstance, would that 5 be a pass or a fail? 6 A. Well, I would equate that to an 7 appointment. I mean, that would be very -- to 8 say that, okay, you can come in, I'll give you 9 PTE starting at 4:00 o'clock. I understood that 10 Mimi Lopez testified pretty directly that 11 appointments were not associated with -- or ever 12 used with urgents or emergencies, so that's the 13 way I interpret your hypothetical, is that that 14 sounds like it's an agreement to meet at a 15 different time which would be then my 16 understanding an appointment, but she 17 testified that she really didn't -- they didn't 18 use appointments for emergencies or -- or 19 urgents. 20 Q. Did she testify that they never did? 21 A. It's -- it's pretty direct. I mean, 22 I read it within the last couple of days. It's 23 pretty direct. I don't know that -- without 24 going back, I will let the testimony speak for</p>

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<p style="text-align: right;">Page 165</p> <p>1 itself, but it was pretty direct if I recall.</p> <p>2 Whenever you're ready at a good</p> <p>3 breaking point for lunch, that would be great.</p> <p>4 MR. DUTTON: Yeah, we're going to take a</p> <p>5 break for lunch.</p> <p>6 THE WITNESS: Sure.</p> <p>7 THE VIDEOGRAPHER: This marks the end of DVD</p> <p>8 No. 3. We are off the record at 12:40 p.m.</p> <p>9 (WHEREUPON, a lunch break was</p> <p>10 taken.)</p> <p>11 THE VIDEOGRAPHER: Here begins DVD No. 4. We</p> <p>12 are on the record at 1:34 p.m.</p> <p>13 BY MR. DUTTON:</p> <p>14 Q. Good afternoon, Mr. Dudney. I think we</p> <p>15 were on Exhibit 007 and can you turn to the</p> <p>16 e-mail from Rick Wimer to Midi Lopez dated</p> <p>17 March 27th, 2006 ending in Bates No -- well,</p> <p>18 it's AMSCAL06525730.</p> <p>19 A. 730?</p> <p>20 Q. Yeah.</p> <p>21 A. From Mr. Wimer to Ms. Lopez, yes.</p> <p>22 Q. Dated March 27th?</p> <p>23 A. Correct.</p> <p>24 Q. 5:34 p.m.?</p>	<p style="text-align: right;">Page 167</p> <p>1 next document in order, which is also dated</p> <p>2 March 27th, 2006, and this one has the month by</p> <p>3 month attached Excel spreadsheets. Do you see</p> <p>4 that? It has the Bate stamp ending in 8236.</p> <p>5 A. Yes, and I'm just looking at what</p> <p>6 periods it has. It's got 13 Excel files that</p> <p>7 appear to be attached to it, although they're</p> <p>8 not printed out as part of this -- what you</p> <p>9 handed me, and it looks like it covers all the</p> <p>10 months of 2005 and then January of 2006.</p> <p>11 Q. And do you understand it's the same</p> <p>12 13 months that are depicted on the prior</p> <p>13 document which is the -- the pass/fail recap</p> <p>14 that was attached to the other e-mail from</p> <p>15 March 27th, 2006?</p> <p>16 A. Yeah, I would -- I would infer that it</p> <p>17 is only -- but just pointing out that while 2006</p> <p>18 appears to be labeled for January in the</p> <p>19 previous year does not -- it would seem just</p> <p>20 given the order in the e-mails that that Jan</p> <p>21 through December that is on Bate stamp 731 that</p> <p>22 that would represent 2005 data.</p> <p>23 Q. Now, the score, if you will, the recap</p> <p>24 document which is the simple one-page</p>
<p style="text-align: right;">Page 166</p> <p>1 A. Yes.</p> <p>2 Q. At least that's the time that's on the</p> <p>3 e-mail.</p> <p>4 Mr. -- Mr. Wimer instructs Ms. Lopez to</p> <p>5 please run copies of those in red, I'll be over</p> <p>6 to review with you, thanks, and then there's an</p> <p>7 attachment called Book1.xls. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And Book1.xls sets out the month by</p> <p>10 month pass/fail percentage for each category of</p> <p>11 work order for the period January 2005 through</p> <p>12 January 2006. Do you see that?</p> <p>13 A. This printout appears to do that. I --</p> <p>14 I don't know that without going back to the</p> <p>15 electronic file that I can say Book1.xls only</p> <p>16 contains this, but what is Bate stamped in the</p> <p>17 last three numbers with 731, which is the page</p> <p>18 just following that, that's what it appears to</p> <p>19 be, although it doesn't label the percentages as</p> <p>20 such, I believe that those numbers appear to me</p> <p>21 to be pass/fail type percentages.</p> <p>22 Q. And have you seen this document before?</p> <p>23 A. Yes.</p> <p>24 Q. And can you take a look at the -- the</p>	<p style="text-align: right;">Page 168</p> <p>1 spreadsheet --</p> <p>2 A. Yes.</p> <p>3 Q. -- for routine work orders the -- the</p> <p>4 score or the pass/fail percentages -- pass/fail</p> <p>5 percentage is above 90 every single month except</p> <p>6 for June which is when it is at 90. Do you see</p> <p>7 that?</p> <p>8 A. That's not correct. If you look at</p> <p>9 March, it's 88 percent, but other than that --</p> <p>10 Q. Sorry, 88.</p> <p>11 A. I would agree with your statement other</p> <p>12 than March.</p> <p>13 Q. Okay. And then urgent there are one,</p> <p>14 two, three -- four months below 90. Do you see</p> <p>15 that?</p> <p>16 A. Are you including Jan 2006 or not or</p> <p>17 just -- are you looking at '05?</p> <p>18 Q. No, just 2005.</p> <p>19 A. There are -- there appear to be four</p> <p>20 that are below 90 and one at 90.</p> <p>21 Q. And then for emergencies, there are</p> <p>22 one, two, three, four -- five that are below 90,</p> <p>23 correct?</p> <p>24 A. Correct, again excluding just -- just</p>

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<p style="text-align: right;">Page 169</p> <p>1 looking at the Jan through December portion, 2 that's correct. 3 Q. Now, do you understand -- or from your 4 review of the documents, do you understand that 5 at Fort Irwin the performance incentive fee was 6 calculated on a month-by-month basis instead of 7 on an annual basis? 8 A. Yes, I've seen discussion around that 9 concept. 10 Q. And are you aware that the March 27th 11 scorecard, if you will, or recap in the Excel 12 spreadsheets from March 27, 2006, were the first 13 iteration of the pass/fail report broken down 14 into three categories, emergency, urgent and 15 routine, and broken out on a month-by-month 16 basis that was completed or compiled at -- for 17 the Irwin project? 18 A. I don't know that I could testify that 19 this was the very first time that it was shown 20 like this or not. 21 Q. Do you -- would you agree that this is 22 the very first time that the Fort Irwin project 23 had used the pass/fail report for the purposes 24 of scoring its incentive fee?</p>	<p style="text-align: right;">Page 171</p> <p>1 THE WITNESS: There is a difference to my 2 understanding of the two different iterations of 3 this. 4 BY MR. DUTTON: 5 Q. So, for example, if I had a thousand 6 emergency work orders during a particular year 7 and I responded to 500 of those work orders in 8 30 minutes and I responded to 500 in 75 minutes, 9 my average response time would be below an hour, 10 correct? 11 A. Yes. 12 Q. And I could claim a hundred percent of 13 my incentive fee for that portion of the -- 14 A. Well, I don't think -- if you did it 15 that way and it was acceptable to do it that 16 way, then one could approach it -- if that was 17 an acceptable methodology to do that sort of 18 averaging, then -- 19 Q. And that's how it was calculated for 20 the 2004 incentive period, wasn't it? 21 A. Yes, it was calculated some average. 22 My only point is I don't know that the PMA 23 describes it in that way is -- 24 Q. I'm not asking you about that.</p>
<p style="text-align: right;">Page 170</p> <p>1 A. My understanding, Mr. Dutton, is that 2 2005 that the data reported for that, that that 3 was -- there was use of the pass/fail report for 4 that year as opposed to, for example, 2004 where 5 I understand it there was data used from Yardi, 6 but through a different report, so I think 7 that -- again, subject to check and thinking 8 about it some more, but my initial reaction to 9 your question is that, yes, I think it's the -- 10 I think they are at this point now using -- and 11 there certainly is evidence that there is use of 12 the Yardi system in 2005. 13 Q. Now, hypothetically, Mr. Dudney, there 14 is a big difference between using a report that 15 reports on the average response time and a 16 report that is a pass/fail report which are the 17 average times that -- or the -- the percentage 18 of work orders to which they responded to on a 19 timely basis? 20 MS. WELCH: Objection to form. 21 THE WITNESS: Let me ask to have that one 22 read back, please. 23 (WHEREUPON, the record was read 24 by the reporter as requested.)</p>	<p style="text-align: right;">Page 172</p> <p>1 My -- if you take those same numbers 2 and apply the pass/fail report and calculate the 3 percentage fee that way as was done in 4 subsequent years, my hypothetical would yield a 5 50 percent pass rate, correct? 6 A. Yes, it would. 7 Q. And that could potentially make a large 8 difference in the incentive fee that Pinnacle 9 was entitled to, correct? 10 A. Yes. 11 Q. Under the -- under the second option or 12 the -- the -- the pass/fail report, because 13 there's no averaging, every work order counts 14 for itself? 15 MS. WELCH: Objection to form. 16 THE WITNESS: There -- as I understand the 17 way it works, it's -- each one is calculated 18 individually and it rolls into the totals that 19 are shown, but yes, every -- every work order 20 counts and is listed on the pass/fail report. 21 BY MR. DUTTON: 22 Q. Now, assuming that the March 27th 23 scores that are in Exhibit 7 were the first 24 iteration of the pass/fail scores for 2005,</p>

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<p style="text-align: right;">Page 173</p> <p>1 have -- has AlixPartners calculated the 2 percentage or the dollar amount of increase and 3 incentive fee that Pinnacle would have earned if 4 its pass/fail score had been based on the 5 March 27th, 2006 numbers as opposed to the 6 March -- or sorry, as opposed to the April 6th, 7 2006 numbers? 8 A. I don't know that -- we may have. I 9 don't recall one way or the other if we've run a 10 calculation like that. Not -- one does not come 11 to my mind as I think about it, but it may be 12 that someone on my team ran that. 13 Q. Well, take a look -- let's see, it's 14 three or four pages later at Bate stamp 15 AMSCAL06542264. Do you see that? 16 A. Yes, this is a March -- or March 30th, 17 2006 e-mail? 18 Q. Yeah, it's the March 30th, 2006 e-mail 19 again forwarding something called a pass/fail 20 recap that has an attachment that's entitled 21 Book1.xls. Do you see that? 22 A. Yes. 23 Q. And attached there you have the same 24 months and essentially the same scores, correct?</p>	<p style="text-align: right;">Page 175</p> <p>1 A. I do. 2 Q. And then she says, I will work on May, 3 June urgent and emergency, March emergency and 4 finally January of 2006 urgent and emergency, 5 and she says, these should not take me as long 6 since I have figured an easy way to do it. Do 7 you see that? 8 A. Yes. 9 Q. And if you just look at the score sheet 10 on the previous page of Exhibit 007, the months 11 that -- 12 A. Is that the one labeled 265 just so I 13 have them in order? 14 Q. Yes. 15 A. Okay. 16 Q. The months that Ms. Lopez identifies or 17 the months where the scores -- May, June urgent 18 and emergency. In June the scores are 77 for 19 emergencies and 85 for urgents, correct? 20 A. 77 and 85 for emergency and urgent for 21 May of 2005 respectively. 22 Q. She also says she's going to work on 23 March, but that -- March emergencies, but March 24 emergencies are already at 99 according to this</p>
<p style="text-align: right;">Page 174</p> <p>1 A. Let me compare. Unless I missed one, 2 they seem to be identical. 3 Q. Okay. And then if you take a look at 4 the next page in the exhibit, the page ending in 5 Bate Stamp No. 2266, do you see that? 6 A. Yes. 7 Q. And there is a -- an e-mail and the 8 subject is work order November2005.xls? 9 A. Yes. 10 Q. And Ms. Lopez sends that to Mr. Wimer, 11 correct? 12 A. It is from Ms. Lopez to Mr. Wimer on 13 the 31st of 2006. 14 Q. And November 2005, that was -- that was 15 the month according to the score sheet on the 16 previous page where the percentage -- the past 17 percentage was 80 for November and 67 -- sorry, 18 80 for urgents -- 80 for emergencies, 67 for 19 urgents for November 2005, right? 20 A. Yes. 21 Q. And Ms. Lopez sends Mr. Wimer this 22 update on March 31st, 2006. She says, here is 23 the update, thank goodness, it took me quite a 24 while, et cetera. Do you see that?</p>	<p style="text-align: right;">Page 176</p> <p>1 score? 2 A. Yes. 3 Q. And then on April 1st, 2006, do you see 4 that? 5 A. I'm sorry. Are you going to another 6 e-mail? 7 Q. Yes. 8 A. Which one is this? 9 Q. 2747 is the Bate stamp numbers. 10 A. 2747. Okay. 11 Q. And Ms. Lopez sends her -- sends her 12 data to Jerry Vinson, herself, Ronnie Motley and 13 Wes Campbell? 14 A. Yes. 15 Q. For security purposes? 16 A. Just in case I do not want to lose my 17 data -- yes. 18 Q. And then finally, on April 6th, 2006, 19 Ms. Lopez sends to Rick Wimer and Wes Campbell 20 which she says is the final time I will send you 21 these and she's sending the pass/fail reports 22 for the 2005 to January 2006 period? 23 THE WITNESS: I'm sorry. I just -- I got 24 distracted for a second. Could you read that</p>

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<p style="text-align: right;">Page 177</p> <p>1 back please for me?</p> <p>2 (WHEREUPON, the record was read</p> <p>3 by the reporter as requested.)</p> <p>4 THE WITNESS: Yeah, the only -- just to be</p> <p>5 clear, the e-mail attachments are -- they're</p> <p>6 more numerous than for -- they include -- in</p> <p>7 addition to all of 2005 and January of 2006, it</p> <p>8 appears to include February of 2006 and then</p> <p>9 also a -- something called pass/fail</p> <p>10 summary.xls, so there's a couple additional</p> <p>11 files, but yes, I -- I note that those are</p> <p>12 attachments to this particular e-mail.</p> <p>13 BY MR. DUTTON:</p> <p>14 Q. And that's the type of information that</p> <p>15 you reviewed when you were doing your forensic</p> <p>16 analysis, correct?</p> <p>17 MS. WELCH: Objection to, form.</p> <p>18 THE WITNESS: Yeah, there were a number of --</p> <p>19 yes, there were a number of Excel files that</p> <p>20 were -- were available to us. I don't know that</p> <p>21 we had them for every instance that an e-mail</p> <p>22 said they were there, but we -- we endeavored to</p> <p>23 review the Excel files that Ms. Lopez was using</p> <p>24 as part of our review.</p>	<p style="text-align: right;">Page 179</p> <p>1 backward up until Line 45, so said differently,</p> <p>2 Line 45 to Line 76 I believe all fall within the</p> <p>3 window in terms of last updated by Ms. Lopez</p> <p>4 that you pointed to, and that -- just visually</p> <p>5 that -- the number of last updates are greater</p> <p>6 than the number of updates that Ms. Lopez has</p> <p>7 attributed to her -- if you go on to Page 1 of</p> <p>8 4, so yes.</p> <p>9 Q. So out of a total of 44 work orders</p> <p>10 that were last updated by Ms. Lopez, 31 of them</p> <p>11 were updated within those five or six days</p> <p>12 between March 30th -- or March 29th and</p> <p>13 April 5th, 2006?</p> <p>14 A. Correct, they were.</p> <p>15 Q. And those were all emergency and urgent</p> <p>16 work orders, correct?</p> <p>17 A. Yes, I believe they are.</p> <p>18 Q. Did you ever come across any evidence</p> <p>19 where Ms. Lopez updated routine work orders in</p> <p>20 Yardi to -- to change the work order response</p> <p>21 time for routine work orders?</p> <p>22 A. I'd have to look back at the data.</p> <p>23 I -- there may well be ones where she updated a</p> <p>24 routine. They just didn't make the requirements</p>
<p style="text-align: right;">Page 178</p> <p>1 BY MR. DUTTON:</p> <p>2 Q. And if you look back at Exhibit 008,</p> <p>3 which is Exhibit 6 from your report, and that's</p> <p>4 the comparison of the handwritten work orders?</p> <p>5 A. Yes.</p> <p>6 Q. To the work order paper copies and --</p> <p>7 and the annual pass/fail reports and other</p> <p>8 information, do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And if you look at the e-mail -- or the</p> <p>11 work orders that were last updated by Ms.</p> <p>12 Lopez --</p> <p>13 A. Yes.</p> <p>14 Q. -- would you agree with me that --</p> <p>15 well, the largest number of dates on which</p> <p>16 Ms. Lopez last updated work orders are during</p> <p>17 the period from March 29th, 2006, through</p> <p>18 April 5th, 2006?</p> <p>19 A. Without doing an actual count, I would</p> <p>20 agree that it appears -- because if I'm reading</p> <p>21 the -- if I understand your question, I would on</p> <p>22 Page 2 of 4 to Exhibit 6 to my Exhibit 001</p> <p>23 report for purposes of this deposition, but</p> <p>24 Exhibit 6 inside the report, from Line 76 going</p>	<p style="text-align: right;">Page 180</p> <p>1 that I utilized to include the listing of work</p> <p>2 orders that I did on my Exhibit 6 since these</p> <p>3 are all urgents and emergencies.</p> <p>4 Q. And you mention in a number of -- or I</p> <p>5 think you mention in a report that you saw a</p> <p>6 number of instances where the information that</p> <p>7 was in Yardi implied that a work order had</p> <p>8 failed yet the pass/fail report that was used to</p> <p>9 score Pinnacle's incentive fee was hard-coded so</p> <p>10 that it would pass. Do you recall that?</p> <p>11 A. There are instances where you see that</p> <p>12 if you look at the Yardi data, it would show a</p> <p>13 fail from a calculation perspective, but then it</p> <p>14 was hard-coded to a pass because there were</p> <p>15 certain -- well, I -- one, I saw instances of</p> <p>16 that, yes, and I also understood too that the</p> <p>17 hard-coding to a pass was a technique that was</p> <p>18 utilized for different reasons, but one of them</p> <p>19 was with respect to appointments that might fall</p> <p>20 outside the accepted window.</p> <p>21 Q. And that was something that -- that</p> <p>22 Pinnacle disclosed to the owner and to the Army</p> <p>23 at Fort Irwin, correct?</p> <p>24 A. With respect to appointments, yes, they</p>

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<p style="text-align: right;">Page 181</p> <p>1 were aware of that.</p> <p>2 Q. With respect to appointments --</p> <p>3 A. Mr. Winter was aware of that if I -- as</p> <p>4 I remember.</p> <p>5 Q. And the Army was aware of that too,</p> <p>6 right?</p> <p>7 MS. WELCH: Objection, foundation.</p> <p>8 THE WITNESS: Yeah, I -- I don't know that I</p> <p>9 can say dispositively that they were, but I</p> <p>10 would -- my assumption would be that they were</p> <p>11 just because it was known to Mr. Winter and</p> <p>12 therefore the owner.</p> <p>13 BY MR. DUTTON:</p> <p>14 Q. Now, did you review the 44 examples</p> <p>15 where Ms. Lopez was the last person to have</p> <p>16 updated information in Yardi and the work order</p> <p>17 response time in Yardi did not agree with the</p> <p>18 handwritten tech sheets?</p> <p>19 A. Yes.</p> <p>20 Q. Did you review all of them?</p> <p>21 A. Yes.</p> <p>22 Q. Did you notice that on a number of</p> <p>23 occasions the work orders that were last updated</p> <p>24 by Ms. Lopez were -- referred to other work</p>	<p style="text-align: right;">Page 183</p> <p>1 effort to understand which of those spreadsheets</p> <p>2 most closely resembles what was ultimately input</p> <p>3 into Yardi.</p> <p>4 Q. And then on the -- in the description</p> <p>5 of the -- well, in the description that was</p> <p>6 pulled out of Yardi and put into Excel for</p> <p>7 emergency and urgent work orders, did you note</p> <p>8 that oftentimes the description signifies either</p> <p>9 an a.m. or a p.m.?</p> <p>10 A. There are ones that have sometimes</p> <p>11 dates and then they have either an a.m. or a</p> <p>12 p.m. in them, yes.</p> <p>13 Q. And did you ask anybody what that</p> <p>14 meant?</p> <p>15 A. I don't know if -- if at the time -- I</p> <p>16 don't know that I've asked anybody in an</p> <p>17 interview or one of my team has asked anybody in</p> <p>18 particular with respect to that. I don't know</p> <p>19 that I've had that conversation.</p> <p>20 Q. Did you review any depositions to see</p> <p>21 if the -- if the Clark legal team had asked</p> <p>22 anybody during depositions what that meant?</p> <p>23 A. I don't -- I don't recall.</p> <p>24 Q. Did you do any analysis to see whether</p>
<p style="text-align: right;">Page 182</p> <p>1 orders?</p> <p>2 A. There are some instances where that</p> <p>3 occurs.</p> <p>4 Q. And did you -- did you pull those and</p> <p>5 review those also?</p> <p>6 A. To the extent that we could identify</p> <p>7 them.</p> <p>8 Q. And did you review the spreadsheets</p> <p>9 that were attached to these work orders, in</p> <p>10 particular, the -- the description of the work</p> <p>11 orders, the emergency and urgent work orders</p> <p>12 that Ms. Lopez changed?</p> <p>13 A. I may be misunderstanding your</p> <p>14 question, but are you asking me did we review</p> <p>15 the descriptions included in the Excel</p> <p>16 spreadsheets --</p> <p>17 Q. Yes.</p> <p>18 A. -- that were part of the e-mails that</p> <p>19 you were just walking me through?</p> <p>20 Q. Yes.</p> <p>21 A. Okay. Yes, we -- we did review those,</p> <p>22 and as I said, there were a number of different</p> <p>23 spreadsheets and we did comparisons of the</p> <p>24 spreadsheets to what was included in Yardi in an</p>	<p style="text-align: right;">Page 184</p> <p>1 that practice either identifying -- inserting a</p> <p>2 date in either a a.m. or an p.m. whether that</p> <p>3 practice was used with respect to routine work</p> <p>4 orders as opposed to urgents and emergencies?</p> <p>5 A. I don't know that I've done a</p> <p>6 comparison of the breakdown, if you will, or the</p> <p>7 distribution of that particular demarcation</p> <p>8 juxtaposing that against priority.</p> <p>9 Q. Let me show you what I'll mark as</p> <p>10 Exhibit 009 -- I think that's right.</p> <p>11 (WHEREUPON, DUDNEY Deposition</p> <p>12 Exhibit No. 009 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. DUTTON:</p> <p>15 Q. Mr. Dudney, I'm handing you what's been</p> <p>16 marked as Exhibit 009, and Exhibit 009 I believe</p> <p>17 is a Yardi example that you pulled and that you</p> <p>18 cite frequently in your report, specifically</p> <p>19 work order No. 124874.</p> <p>20 A. Yes, let me just orient myself. Give</p> <p>21 me a second to do that.</p> <p>22 Q. Actually, Mr. Dudney, I referred to</p> <p>23 this one as one of the -- as one of the Trifecta</p> <p>24 work orders or since we're in Chicago and we did</p>

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<p style="text-align: right;">Page 185</p> <p>1 just win the Stanley Cup, I'll call them the hat 2 trick of work orders. 3 A. Okay. 4 Q. Okay? So turn to Page 38 of your 5 report. 6 A. Okay. 7 Q. And at the bottom of Page 38 in the 8 last bullet, you say, therefore, this work order 9 appears to be an example of, one, the 10 handwritten notes on a paper work order not 11 matching the annual pass/fail report. Two, 12 Yardi labor data indicates a technician working 13 at two residences at the same time, and, three, 14 Yardi backup data corroborating failing 15 handwritten dates and times listed on a paper 16 work order. So all three of your analyses apply 17 to this example, right? 18 A. That's what I've noted here on Page 38. 19 Q. Now, take a look at Exhibit 009. Okay? 20 A. Yes. 21 Q. Exhibit 009 is the work order 22 information for work order 124874? 23 A. Yes. 24 Q. And you can tell from the call date</p>	<p style="text-align: right;">Page 187</p> <p>1 Q. So the paper work order -- interesting, 2 the paper work order says the status is 3 scheduled, right? 4 A. Yes. 5 Q. And the problem description is POC 6 states only toilet is clogged. Do you see that? 7 A. Yes. 8 Q. What does it indicate to you, 9 Mr. Dudney, that the status of this work order 10 is scheduled? 11 A. That simply that that reflects the 12 status of the -- that someone had selected in 13 Yardi at the time that this was printed out. 14 Q. And if you look down the left column, 15 you'll see that underneath call time, which is 16 the same as the call time in Yardi, there's a 17 start time. Do you see that? 18 A. Yes. 19 Q. And the start time is for 10:00 a.m. 20 Do you see that? 21 A. Yes. 22 Q. And that's before the call time, 23 correct? 24 A. That's correct.</p>
<p style="text-align: right;">Page 186</p> <p>1 that the call came at November 30th, 2005 at 2 3:07 p.m. Do you see that? 3 A. Correct. 4 Q. And the call apparently didn't go 5 through the call service. Apparently the call 6 went through the leasing office at Fort Irwin. 7 Do you see that? Because the call was 8 created by K -- the work order was created by 9 K. Hicks? 10 A. Yes. 11 Q. Do you know who K. Hicks is? 12 A. I don't. 13 Q. I'll represent to you that she's one of 14 the work order staff that works in -- or worked 15 in the leasing office at Fort Irwin. 16 A. Okay. 17 Q. And the call came in at 3:07 p.m. Do 18 you see that? 19 A. Yes. 20 Q. On November 30th, 2005? 21 A. Yes. 22 Q. And let's -- let's go to the paper work 23 order first. Do you see -- 24 A. Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. What does that indicate to you, 2 Mr. Dudney? 3 A. Simply that that's -- well, it's 4 impossible to schedule something prior to a 5 call. 6 Q. How do you know that it's impossible to 7 schedule something? 8 A. Because if they haven't called at least 9 per the data, then how would it be scheduled. 10 Q. Do you know whether it's possible if 11 you received a call, to simply schedule that 12 call for a technician five hours earlier in the 13 Yardi database? 14 A. Is it -- can one -- are you asking me 15 can one go in and change the data such that or 16 to make it -- 17 Q. I'm not talking about changing the 18 data. 19 A. Okay. 20 Q. I'm talking about a call comes in at 21 3:07 in the afternoon. 22 A. Yes. 23 Q. I am the dispatcher at Fort Irwin. 24 A. Oh, I see. Uh-huh.</p>

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<p style="text-align: right;">Page 189</p> <p>1 Q. And I schedule that call for 10:00 a.m. 2 that day. 3 A. Ah. You're asking me technically if 4 that's possible? 5 Q. Yes. 6 A. I'd have to check. I believe it is, 7 but I'd have to check if one could actually 8 physically do that or if it prevents you from 9 doing that. 10 Q. And the finish time that's stated -- 11 that's printed below is 10:29 a.m. Do you see 12 that? 13 A. That's correct. 14 Q. What does that indicate to you, 15 Mr. Dudney? 16 A. That the scheduled labor tab has a 17 10:29 a.m. entry in it. 18 Q. So -- and in the backup data on the 19 backup tape, where is the scheduled time 20 reflected, Mr. Dudney? 21 A. Well, I've got one backup tape I think 22 that's printed and I don't have -- in terms of 23 the printout that's provided, I don't have the 24 scheduled portion of the labor tab. That's only</p>	<p style="text-align: right;">Page 191</p> <p>1 A. Well, the okay to enter is checked yes. 2 The access entry notes on the first page of 3 current Yardi say PTE, no pets and then it gives 4 a phone number. 5 Q. Did you ask what the significance of 6 the p.m. entry was either in the appointment 7 time field or up in the description? 8 A. We reviewed to the extent that there 9 was discussion about it. Again, I don't know 10 that I had the opportunity to directly ask 11 anybody about it at the time that I conducted my 12 interviews, but we would have reviewed any 13 description about that in the various 14 depositions to the extent it was provided. 15 Q. Do you recall what you reviewed? 16 A. Not as I sit here today. I'd have to 17 look back at the -- 18 Q. Do you recall anyone for the Clark 19 legal team asking somebody what the significance 20 of the p.m. entry was in the description or in 21 the appointment required? 22 A. I don't recall one way or the other if 23 they asked that question or not just as I sit 24 here now.</p>
<p style="text-align: right;">Page 190</p> <p>1 showing me the actual, but you can see on the 2 status history, the previous page, that the 3 scheduled is shown at 3:30 and then the work 4 completed shows at 8:45 all on 11-30. 5 Q. Okay. And now on the backup tape, is 6 there an entry for appointment time? 7 A. No. 8 Q. Well, take a look down at the left-hand 9 column under general information. Do you see 10 that? 11 A. Yes, it has p.m. there, but no time. 12 Q. So there is a -- an entry in the 13 appointment time for p.m., correct? 14 A. Yes. 15 Q. And in the description up on the top 16 right-hand column, the date is 11-30, there is a 17 p.m. and then there's PTE, toilet. Do you see 18 that? 19 A. Correct. 20 Q. Do you know what that indicates, 21 Mr. Dudney? 22 A. That there was permission to enter and 23 that the issue was a toilet. 24 Q. And when was there permission to enter?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Now, are you aware that the Clark legal 2 team has provided your report to the United 3 States Attorney for the Eastern District of 4 Virginia? 5 A. No. 6 Q. Did you give them permission to do 7 that? 8 A. I don't recall having a discussion with 9 them one way or the other about it. 10 Q. Did you prepare this report knowing 11 that it would be used by the Clark legal team to 12 provide information for -- to the U.S. Attorney 13 for the Eastern District of Virginia? 14 A. It wasn't something that I recall 15 discussing with the Clark legal team one way or 16 the other so -- excuse me, I -- it was not 17 something that I was asked to do. I was not 18 asked to prepare a report for the district 19 attorney. I prepared the report for the reasons 20 that I stated in my -- in my report itself but 21 that's -- 22 Q. Have you responded to any questions 23 from the United States Attorney for the Eastern 24 District of Virginia with respect to your expert</p>

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<p style="text-align: right;">Page 193</p> <p>1 report?</p> <p>2 A. No, I have not been asked any questions</p> <p>3 with respect to the -- that I understand that</p> <p>4 were attributable to the U.S. Attorney.</p> <p>5 Q. Have you been asked to supply any</p> <p>6 information to the U.S. Attorney?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. In your comparison of backup tapes to</p> <p>9 current Yardi, from that comparison you're able</p> <p>10 to identify, are you not, all of the work orders</p> <p>11 in Yardi where Midi Lopez was the last person to</p> <p>12 have updated either an emergency or an urgent</p> <p>13 work order?</p> <p>14 THE WITNESS: Let me ask to have that</p> <p>15 question read back, please.</p> <p>16 (WHEREUPON, the record was read</p> <p>17 by the reporter as requested.)</p> <p>18 THE WITNESS: Yes, to the extent that she is</p> <p>19 the last person that recorded her time, I would</p> <p>20 be able to run an -- an analysis of that data to</p> <p>21 identify those where Ms. Lopez was the last one</p> <p>22 to update.</p> <p>23 BY MR. DUTTON:</p> <p>24 Q. And during your review in comparison of</p>	<p style="text-align: right;">Page 195</p> <p>1 of occasions where the only change that</p> <p>2 Ms. Lopez made was to add the letters that</p> <p>3 the -- the date and a.m. or p.m. in the</p> <p>4 description field. Have you noticed any of</p> <p>5 those?</p> <p>6 A. My best recollection, Mr. Dutton, is</p> <p>7 that, yes, there are some of those that exist.</p> <p>8 I'd have to go back and check. My only point</p> <p>9 was this example that you have in front of me</p> <p>10 now is not an example of that because the actual</p> <p>11 current Yardi has actual times which are 3:15 to</p> <p>12 3:40 p.m. on 11-30 and that's different.</p> <p>13 Q. I agree with you.</p> <p>14 A. Okay. Yeah.</p> <p>15 Q. Okay. So -- so let's assume that the</p> <p>16 backup tape just didn't have the 11:30 p.m.</p> <p>17 electrical fixtures in -- or whatever the</p> <p>18 description is.</p> <p>19 A. This is a toilet issue.</p> <p>20 Q. Right. So let's assume that it just</p> <p>21 said toilet issue or toilet clogged.</p> <p>22 A. Yes.</p> <p>23 Q. Have you seen situations where</p> <p>24 Ms. Lopez updated Yardi by simply putting the</p>
<p style="text-align: right;">Page 194</p> <p>1 the backup tape to current -- the current Yardi</p> <p>2 database for Fort Irwin, have you noticed the</p> <p>3 number of occasions where the only update that</p> <p>4 Ms. Lopez made to an urgent or an emergency work</p> <p>5 order was including the date and either a.m. or</p> <p>6 p.m. in the problem description area?</p> <p>7 THE WITNESS: Let me just ask to have that</p> <p>8 read back to make sure I understand the</p> <p>9 question.</p> <p>10 (WHEREUPON, the record was read</p> <p>11 by the reporter as requested.)</p> <p>12 THE WITNESS: I don't know that I've run a</p> <p>13 separate analysis to identify just those entries</p> <p>14 that have that characteristic.</p> <p>15 BY MR. DUTTON:</p> <p>16 Q. Have you noticed any where the only</p> <p>17 thing Ms. Lopez did was in the description added</p> <p>18 the date and either a.m. or p.m. next to the</p> <p>19 date like the example that I've just provided</p> <p>20 you in Exhibit --</p> <p>21 A. Well, I don't think that's accurate for</p> <p>22 the --</p> <p>23 Q. I'm not saying that this exhibit made</p> <p>24 that change. I'm saying that there are a number</p>	<p style="text-align: right;">Page 196</p> <p>1 date in either a.m. or p.m. in the description</p> <p>2 field?</p> <p>3 A. There may well be. I just -- I haven't</p> <p>4 run a separate analysis to try and quantify the</p> <p>5 number of times that that happened as opposed to</p> <p>6 others. There's obviously a lot of changes that</p> <p>7 can happen from the backup tape to current</p> <p>8 Yardi, that being just one.</p> <p>9 Q. Have you asked yourself why would</p> <p>10 Ms. Lopez bother to go into the Yardi database</p> <p>11 and update the description field that way,</p> <p>12 Mr. Dudney?</p> <p>13 A. I have looked in general at all kinds</p> <p>14 of updates that were made particularly as it</p> <p>15 relates to impacting the -- to the extent that</p> <p>16 these changes would impact the pass/fail</p> <p>17 report so --</p> <p>18 Q. Well, that change wouldn't impact the</p> <p>19 pass/fail report, would it?</p> <p>20 A. No, that description would not. The</p> <p>21 change in the actual times would, though, that</p> <p>22 I pointed out.</p> <p>23 Q. Why would -- why would Ms. Lopez change</p> <p>24 the description field to add the date and either</p>

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<p style="text-align: right;">Page 197</p> <p>1 a.m. or p.m.?</p> <p>2 A. I don't know that I can testify as to</p> <p>3 what reason she might have had to do that.</p> <p>4 Q. You haven't asked her?</p> <p>5 A. I haven't. I have not asked her that.</p> <p>6 Q. You haven't asked counsel to ask her?</p> <p>7 A. I don't know that I can testify to that</p> <p>8 because we've asked counsel a lot of questions</p> <p>9 around the -- the work orders. I don't remember</p> <p>10 having a specific conversation around that</p> <p>11 particular data point, but it may be that --</p> <p>12 Q. You're not aware that counsel has asked</p> <p>13 for --</p> <p>14 A. I'm not as I sit here today without</p> <p>15 going back and looking at the record that I can</p> <p>16 be a hundred percent certain on that.</p> <p>17 Q. Were you asked to assemble a group of</p> <p>18 work orders where Ms. Lopez was the last person</p> <p>19 to have updated either an emergency or urgent</p> <p>20 work order for the 2005 incentive fee period?</p> <p>21 A. It wasn't asked of me that way, no, I</p> <p>22 was -- and the ask was much more broad in terms</p> <p>23 of -- meaning that I was given leave to conduct</p> <p>24 the data analysis in whatever method and way</p>	<p style="text-align: right;">Page 199</p> <p>1 A. My last one is 009, so yeah.</p> <p>2 (WHEREUPON, DUDNEY Deposition</p> <p>3 Exhibit No. 010 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUTTON:</p> <p>6 Q. Exhibit 010 is a work order example</p> <p>7 again from your report for work order</p> <p>8 No. 124395. Do you see that?</p> <p>9 A. I do. Let me just get to that page</p> <p>10 where it's referenced.</p> <p>11 Q. And Exhibit 124395 appears in Table 11</p> <p>12 at Page 39.</p> <p>13 A. You said exhibit and I think you meant</p> <p>14 to say work order number?</p> <p>15 Q. Okay. Work order 124395 which I've</p> <p>16 marked as Exhibit 010 --</p> <p>17 A. Yes.</p> <p>18 Q. -- appears on Table 11, Page 39 of your</p> <p>19 report.</p> <p>20 A. Correct.</p> <p>21 Q. But it's not a work order that has a</p> <p>22 hat trick because there's no Yardi backup data</p> <p>23 for it, right?</p> <p>24 A. There appears to be -- I don't have it</p>
<p style="text-align: right;">Page 198</p> <p>1 I thought was appropriate in light of what</p> <p>2 I knew. Obviously the results of my work order</p> <p>3 analysis identified certain work orders that are</p> <p>4 enumerated on Exhibit 6 and I believe Exhibit 5</p> <p>5 to what you've marked as Exhibit 001, and from</p> <p>6 that you can see a certain number that were</p> <p>7 Ms. Lopez but that fell out of that review, but</p> <p>8 primarily the criteria that I was using was to</p> <p>9 identify situations where the work order data</p> <p>10 had written information that would -- that was</p> <p>11 inconsistent with what was reported in current</p> <p>12 Yardi, if you will, and that as in this case it</p> <p>13 looked like originally the proper work order</p> <p>14 time was input and then response time and then</p> <p>15 it was subsequently changed which would have an</p> <p>16 impact on the pass/fail report.</p> <p>17 Q. Mr. Dudney, did you put together Lopez</p> <p>18 Exhibit 41 for her deposition?</p> <p>19 A. I'd have to see what that looks like if</p> <p>20 you'd like to show that to me. I don't remember</p> <p>21 that one off the top of my head.</p> <p>22 Q. I'm going to show you, Mr. Dudney, what</p> <p>23 I've marked as Exhibit -- I think is</p> <p>24 Exhibit 010.</p>	<p style="text-align: right;">Page 200</p> <p>1 as part of what you handed me here, and</p> <p>2 I presume this is the complete what I'll call</p> <p>3 packet and we produced packets for each of the</p> <p>4 work orders that were contained in Exhibits 5</p> <p>5 and 6 so --</p> <p>6 Q. I believe it is.</p> <p>7 A. Okay.</p> <p>8 Q. And you don't say it is an example of</p> <p>9 all three of your analyses. You only -- you</p> <p>10 only say that for -- for 124874, but for some</p> <p>11 reason it's on -- it makes Table 11 -- can</p> <p>12 you -- can you figure out why you include it in</p> <p>13 Table 11, Mr. Dudney?</p> <p>14 A. Let me just read the context of the</p> <p>15 table.</p> <p>16 Q. And let me say now that I see</p> <p>17 Footnote 1 of Table 11 --</p> <p>18 A. Yes.</p> <p>19 Q. -- there's a discrepancy between work</p> <p>20 order 124874 which you -- which you write up.</p> <p>21 A. Yes.</p> <p>22 Q. The footnote in table -- footnote in</p> <p>23 Table 11 seems to suggest that there is a Yardi</p> <p>24 backup, so we'll leave that one subject to</p>

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<p style="text-align: right;">Page 201</p> <p>1 check, but I wasn't able to find it so --</p> <p>2 A. Okay. Let me just read the --</p> <p>3 Q. And it's not in the text of your</p> <p>4 report.</p> <p>5 A. Let me just read this. Okay. And I'm</p> <p>6 sorry. Your question -- I was just refreshing</p> <p>7 myself with respect to Table 11.</p> <p>8 Q. My question is does work order 124395</p> <p>9 belong in Table 11?</p> <p>10 A. Yes.</p> <p>11 Q. Why?</p> <p>12 A. Because if you look at Table 11, what</p> <p>13 you'll see is it -- what it does is it has three</p> <p>14 groupings of rows, each grouping being two rows</p> <p>15 each and you can see that it compares the two</p> <p>16 work orders that you've identified as -- or put</p> <p>17 in front of me as Dudney Exhibit 009 and then</p> <p>18 Dudney Exhibit 010. It actually orders them in</p> <p>19 the reverse of how you gave them to me, but what</p> <p>20 you show is -- what it shows is that based on</p> <p>21 the Yardi system labor tab in the annual</p> <p>22 pass/fail report, the same technician was at two</p> <p>23 different locations at the same time, so -- on</p> <p>24 the same day.</p>	<p style="text-align: right;">Page 203</p> <p>1 A. Correct.</p> <p>2 Q. And it was scheduled for the 30th,</p> <p>3 correct, the following day?</p> <p>4 A. Yes.</p> <p>5 Q. And according to the -- according to</p> <p>6 the handwritten notes for the routine work order</p> <p>7 on Exhibit 010, Mr. Stevenson, who was the tech</p> <p>8 that was assigned to both of these, was at the</p> <p>9 work order doing the work order that's been</p> <p>10 marked as Exhibit 010, correct?</p> <p>11 A. He indicates that he was doing that</p> <p>12 between 3:00 and 3:45 on November the 30th</p> <p>13 replacing two balusters.</p> <p>14 Q. Okay. And do you see the -- for</p> <p>15 routine work orders, do you see how -- do you</p> <p>16 see in the description field in the appointment</p> <p>17 required field, how an appointment has been</p> <p>18 identified for this work order?</p> <p>19 A. There's just something that says --</p> <p>20 it's the same sort of entry that we saw before</p> <p>21 which it says appointment required and it just</p> <p>22 has the entry p.m., but what I note is it</p> <p>23 doesn't have the star star designation which is</p> <p>24 what Ms. Lopez testified to as I understand it</p>
<p style="text-align: right;">Page 202</p> <p>1 So if you look at the very -- the third</p> <p>2 of the three columns -- or I'm sorry, of rows,</p> <p>3 you'll see that once the update was done by</p> <p>4 Ms. Lopez, what happened was that the Yardi data</p> <p>5 showed that Mr. Stevenson, the technician, was</p> <p>6 at two different locations, one was ANZI2428 and</p> <p>7 the other was ANZI2412 at the same time.</p> <p>8 Q. Okay.</p> <p>9 A. That's what that shows.</p> <p>10 Q. Now, are you familiar with how</p> <p>11 emergency work orders were staffed at Fort</p> <p>12 Irwin?</p> <p>13 A. Generally speaking.</p> <p>14 Q. Let's -- let's refer back to</p> <p>15 Exhibit 009, can we?</p> <p>16 A. Okay.</p> <p>17 Q. Exhibit 009 is an urgent work order,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Exhibit 009 is called in at 3:07 in</p> <p>21 the afternoon, right?</p> <p>22 A. Yes.</p> <p>23 Q. And Exhibit 010 is a routine work</p> <p>24 order, correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 was a designation for appointments which were</p> <p>2 used when routines needed to have an appointment</p> <p>3 in that -- in that, as I understand it, that</p> <p>4 wasn't used for urgents and emergencies.</p> <p>5 Q. Did she say when she started using that</p> <p>6 star star nomenclature?</p> <p>7 A. I'd have to look back to -- to</p> <p>8 associate a date with it.</p> <p>9 Q. Did she say that -- Ms. Lopez say that</p> <p>10 the work order clerks who took the orders were</p> <p>11 always consistent with that nomenclature?</p> <p>12 A. I'd have to look back at her testimony</p> <p>13 on that.</p> <p>14 Q. Have you seen a number of updates to</p> <p>15 Yardi, Mr. Dudney, where Ms. Lopez is simply</p> <p>16 inserting a star star next to the description in</p> <p>17 the description field of Yardi?</p> <p>18 A. She -- she does use that -- that</p> <p>19 nomenclature, so I have seen that nomenclature</p> <p>20 used before.</p> <p>21 Q. Okay. Are you aware that routine work</p> <p>22 orders are scheduled during the day and then if</p> <p>23 emergency work orders are called in during the</p> <p>24 day, Ms. Lopez will call a tech at a nearby home</p>

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<p style="text-align: right;">Page 205</p> <p>1 and ask the tech to go handle the emergency?</p> <p>2 A. I've heard of the concept before</p> <p>3 certainly that that has occurred, that there --</p> <p>4 there are declarants who talk about that</p> <p>5 concept.</p> <p>6 Q. Would you agree with me that this is an</p> <p>7 example of an emergency work order coming in</p> <p>8 during the day at the same time that tech --</p> <p>9 Mr. Stevenson is at a home performing a routine</p> <p>10 work order?</p> <p>11 A. The 3:07 does come in the middle of the</p> <p>12 3:00 to 3:45 window that he says that he was at</p> <p>13 this particular -- the location denoted in</p> <p>14 Dudney Exhibit 010.</p> <p>15 Q. And you recall, don't you, that</p> <p>16 Mr. Stevens is scheduled to do the 3:05 -- or</p> <p>17 sorry, scheduled to do the -- sorry, scheduled</p> <p>18 to do the urgent work order five hours earlier</p> <p>19 than he could have because the call came in at</p> <p>20 3:07 and the scheduled time is 10:00 a.m.?</p> <p>21 A. Again, I don't have the -- well, I have</p> <p>22 in current Yardi the scheduled time. I don't</p> <p>23 have it for the backup in the printout what the</p> <p>24 scheduled time is there other than it shows in</p>	<p style="text-align: right;">Page 207</p> <p>1 Q. So you don't know?</p> <p>2 A. No, I think it worked different ways.</p> <p>3 I don't think it worked only one way.</p> <p>4 Q. Exhibit 009 was called in at 3:07 p.m.</p> <p>5 Can we agree on that?</p> <p>6 A. Yes, that's what the data shows me.</p> <p>7 Q. And if Mr. Stevenson's schedule is</p> <p>8 right, he is out at Mr. Cantu's home replacing</p> <p>9 two ballasts at that time, correct?</p> <p>10 A. Correct.</p> <p>11 Q. There is a paper work order associated</p> <p>12 with Exhibit 009, correct?</p> <p>13 A. Yes.</p> <p>14 Q. How did Mr. -- how did Mr. Stevenson</p> <p>15 get that paper work order?</p> <p>16 A. You can't tell from the face of the</p> <p>17 document itself.</p> <p>18 Q. Is that important to you to know?</p> <p>19 A. It's just -- of course I'd like to know</p> <p>20 as much as I can about any situation but the --</p> <p>21 the work order doesn't tell you -- or the</p> <p>22 handwriting and the other designations don't</p> <p>23 tell you how he physically got the sheet that he</p> <p>24 ultimately had when he then wrote on it here as</p>
<p style="text-align: right;">Page 206</p> <p>1 the status history which doesn't comport in</p> <p>2 terms of the scheduled time to what's included</p> <p>3 on -- in the current Yardi where I do have it in</p> <p>4 the printout you gave me and so it's scheduled</p> <p>5 here for 10 to 10 -- 10:00 a.m. to 10:29 which</p> <p>6 is what's reflected in the paper work order.</p> <p>7 Q. Now, Mr. Dudney, how do you think that</p> <p>8 Mr. Stevenson got a paper work order if he was</p> <p>9 out in the field performing -- replacing</p> <p>10 ballasts at Mr. Cantu's residence? How would he</p> <p>11 get the paper work order to go to Mr. Riley's</p> <p>12 residence to unclog the toilet?</p> <p>13 A. There could be a number of ways he</p> <p>14 could get it.</p> <p>15 Q. How do you understand things worked at</p> <p>16 Fort Irwin?</p> <p>17 A. Well, I understand that there were</p> <p>18 times where the -- the technicians received</p> <p>19 paper work orders from the folks that were</p> <p>20 printing those out and that they were given some</p> <p>21 in the beginning of the day. If I recall</p> <p>22 correctly, there were other instances where they</p> <p>23 got them later. There were also instances where</p> <p>24 they were called so --</p>	<p style="text-align: right;">Page 208</p> <p>1 he has --</p> <p>2 Q. Would a call to a resident be a</p> <p>3 response to an emergency or an urgent work</p> <p>4 order?</p> <p>5 A. I don't think just a call. If</p> <p>6 I remember correctly in terms of the criteria, I</p> <p>7 think that it has to be a -- more than just a</p> <p>8 call.</p> <p>9 Q. Didn't Mr. Milligan's e-mail to</p> <p>10 Mr. Winters say a response could be anything</p> <p>11 from calling a vendor to going out and doing the</p> <p>12 work at the resident's house?</p> <p>13 A. Well, but that's -- right, that's</p> <p>14 calling a vendor versus going out and doing the</p> <p>15 work at the resident's house. That's different</p> <p>16 than a call to the resident.</p> <p>17 Q. How about a call to the resident to</p> <p>18 say, you know, I'll come over and fix your</p> <p>19 toilet and the resident says, I'm not there, why</p> <p>20 don't you wait until tonight?</p> <p>21 A. If it is, then that would -- something</p> <p>22 I would expect to see noted in some way that</p> <p>23 there was a call or something in the notes and</p> <p>24 there isn't anything like that here.</p>

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<p style="text-align: right;">Page 209</p> <p>1 Q. Now, the only thing that there is is</p> <p>2 the unusual situation that the scheduled time is</p> <p>3 five hours earlier than the call time on</p> <p>4 Exhibit 009, right?</p> <p>5 A. Yes.</p> <p>6 Q. And both -- both of these work orders</p> <p>7 have the date and p.m. in the description field,</p> <p>8 right?</p> <p>9 A. Yes, they do.</p> <p>10 Q. And both of these work orders say that</p> <p>11 an appointment is required in the p.m., correct?</p> <p>12 A. They both have that designation on the</p> <p>13 current Yardi, and for the one that I have the</p> <p>14 backup tape, it also has that similar</p> <p>15 designation.</p> <p>16 Q. And a lot of the examples out of the</p> <p>17 140 -- sorry, out of the 115 that you have for</p> <p>18 Fort Irwin are like this, aren't they?</p> <p>19 A. When you say "like this," what</p> <p>20 characteristic are you pointing to?</p> <p>21 Q. A routine work order where the call</p> <p>22 comes in during the middle of a tech's</p> <p>23 performance, a routine work order.</p> <p>24 A. Well, none of the ones that I have for</p>	<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: And whenever you get to a</p> <p>2 stopping point, just since we've been going an</p> <p>3 hour, I want to stretch my legs at some point.</p> <p>4 BY MR. DUTTON:</p> <p>5 Q. Can you tell me what Exhibit 011 is,</p> <p>6 Mr. Dudney?</p> <p>7 A. It is -- let me just flip to my version</p> <p>8 of it. Exhibit 7 which you've marked as</p> <p>9 Deposition Exhibit 011, but it's Exhibit 7 to my</p> <p>10 March 27th, 2015 report, which has been marked</p> <p>11 as Exhibit 001 in this deposition, is a copy,</p> <p>12 double-sided, of what I would call the labor</p> <p>13 analysis with respect to Monterey and I'm just</p> <p>14 flipping to see if it's complete here.</p> <p>15 Q. Well, at the bottom it says 1 of 32.</p> <p>16 A. Yeah, I'm just making sure that each of</p> <p>17 the pages is here.</p> <p>18 Q. I'll represent to you that it's all 32</p> <p>19 pages, Mr. Dudney.</p> <p>20 A. I have -- I would agree with that. I</p> <p>21 have just confirmed it real quick.</p> <p>22 Q. Now, my understanding from your</p> <p>23 description of compiling this exhibit is that</p> <p>24 you analyze work order data at Monterey that</p>
<p style="text-align: right;">Page 210</p> <p>1 these are routines. They're all -- well,</p> <p>2 I should say this: For Midi Lopez they're all</p> <p>3 emergencies and urgents. I can look more</p> <p>4 broadly. There are very few routines for the</p> <p>5 100 and, whatever it is, 15 or 20 that relate to</p> <p>6 Irwin. It's not until you get to Moffett that</p> <p>7 you see, excuse me, more routines. In fact,</p> <p>8 I've only got one routine that I've noted I</p> <p>9 think of just a quick scan of these pages.</p> <p>10 Q. Did Mr. Milligan's e-mail to</p> <p>11 Mr. Winters describing what constitutes a pass</p> <p>12 under the work order system at Fort Irwin</p> <p>13 indicate that appointments were only made for</p> <p>14 routine work orders?</p> <p>15 A. Oh, does e-mail -- I'd have to look</p> <p>16 back at the e-mail to see if it has that. I --</p> <p>17 I recall more directly Ms. Lopez's testimony on</p> <p>18 the issue.</p> <p>19 Q. Let me show you what I'll mark as</p> <p>20 Exhibit 011. Do you see that?</p> <p>21 A. Yeah.</p> <p>22 (WHEREUPON, DUDNEY Deposition</p> <p>23 Exhibit No. 011 was marked for</p> <p>24 identification.)</p>	<p style="text-align: right;">Page 212</p> <p>1 contained both a technician name and data</p> <p>2 populated in the actual start and finish time,</p> <p>3 correct?</p> <p>4 THE WITNESS: Let me ask to have that</p> <p>5 question back read back, please.</p> <p>6 (WHEREUPON, the record was read</p> <p>7 by the reporter as requested.)</p> <p>8 THE WITNESS: I think that's correct.</p> <p>9 BY MR. DUTTON:</p> <p>10 Q. So you think it is correct?</p> <p>11 A. Yes.</p> <p>12 Q. And based on this review, you</p> <p>13 identified a -- a number of instances at the</p> <p>14 Monterey project where the Yardi listed the same</p> <p>15 technician as working on two different homes at</p> <p>16 the same time?</p> <p>17 A. Yes.</p> <p>18 Q. And you state that it's your</p> <p>19 understanding that there may be explanations for</p> <p>20 certain of these data anomalies. Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. What explanations are there?</p> <p>24 A. There can be instances where, for</p>

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<p style="text-align: right;">Page 213</p> <p>1 example, if a -- if a work -- the work to 2 complete a job might have been left open, if, 3 for example, someone was called away from one 4 job site or work order site to a second site and 5 if they -- if the technician kept, if you will, 6 the clock running on site No. 1 and then went to 7 site No. 2, did the work and then came back to 8 site No. 1, if there's an extended, you know, 9 period of time like that, so that would be an 10 example of an anomaly that I controlled for for 11 purposes of identifying the items here. 12 Q. That's one anomaly. Can you think of 13 any others? 14 A. Yes, there's what I would call -- 15 I would call it the multiple -- large sets of 16 work orders. There are some instances where 17 there are numerous work orders that are 18 overlapping for the same technician and it's 19 more than just the straight -- more 20 straightforward ones that I've included here on 21 Exhibit 011, whereby it was unclear to me as 22 I reviewed the work order data what -- what 23 conclusion one could draw from that, so 24 I excluded those because of the nature of the</p>	<p style="text-align: right;">Page 215</p> <p>1 15 minutes or less, I believe. I excluded those 2 primarily because of just the way that Yardi 3 defaults to various time increments unless you 4 manually go in and change it and so I looked for 5 circumstances like that. 6 Then I also controlled for and removed 7 things that I'll call the AB units, meaning that 8 if it was the same address but an A unit and a 9 B unit or a C unit where it seemed as if based 10 on the property description that the units were 11 in very close physical proximity, I excluded 12 those as well. 13 I also excluded situations where the 14 tenant name appeared to be the same even if the 15 address information was different. There was 16 circumstances like that, so I excluded those as 17 well and obviously I -- I only -- I had excluded 18 from the population also things that were, you 19 know, not completed, et cetera, and so I had -- 20 they had to first meet the criteria of having 21 the information that would allow me to make the 22 comparison that I have in Exhibit 011. So those 23 are some of the primary ones that I did. There 24 are a couple of other adjustments that are</p>
<p style="text-align: right;">Page 214</p> <p>1 multiple work orders that surrounded those. So 2 I controlled for those by again removing those 3 from the population that I considered for 4 purposes of this overlap analysis. 5 Q. What others? 6 A. I also looked at instances where the 7 overlap was, if I remember correctly, there's 8 a -- I have a schedule, by the way, that it's 9 not an exhibit, but it's a work paper that lays 10 out each and every one of these, but I will tell 11 you that if the overlap I -- 12 Q. Can you cite it to me so I can find it? 13 A. I can describe it to you. 14 Q. Have you produced it? 15 A. Yes, we have. There's one for 16 Monterey. There's one for -- 17 Q. Is there a Bates number or some way to 18 identify it other than going through all of the 19 documents that you've produced? 20 A. It's Bates numbered. I don't have the 21 number memorized. It's a portrait document that 22 lays out from top to bottom what the reductions 23 are, if you will, in the population, but -- 24 another one was for overlaps that were for</p>	<p style="text-align: right;">Page 216</p> <p>1 listed on this work paper, but those are some of 2 the primary ones that I did. 3 Q. And after all those adjustments at 4 Monterey, you have a total of 1,025 pairs of 5 work orders, right? 6 A. Correct. 7 Q. Take a look at the last one on Page 32 8 of 32, row 125 -- or rows 1025. Do you see 9 that? 10 A. Yes. 11 Q. And do you know whether these are 12 emergency work orders or are routine work 13 orders? 14 A. I don't have that listed here. I'd 15 have to pull up the specific work order to tell 16 you the priority of the work order. 17 Q. So the unit that's listed in the first 18 row 1025 is OK10104. Do you see that? 19 A. Correct. 20 Q. Do you know where that is? 21 A. I don't off the top of my head, no. 22 Q. And the second one, which is two days 23 earlier, is OK10163. Do you see that? 24 A. Yes.</p>

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<p style="text-align: right;">Page 217</p> <p>1 Q. Do you know where those units are in 2 proximity to each other at Fort -- sorry, at 3 Monterey? 4 A. I -- I don't have them on a map or 5 something, so no, I don't know the -- I haven't 6 been to those particular units. 7 Q. Now, you have the last updated date, 8 correct? 9 A. Yes. 10 Q. And you have the -- the labor employee, 11 correct, Mr. Perez? 12 A. Yes. 13 Q. And for the first 1025 the actual start 14 time date in Yardi is 4:00 p.m., right? 15 A. Correct. 16 Q. And for the second 1025 the actual 17 start date/time is 4:41 p.m. Do you see that? 18 A. Correct. 19 Q. So that's 41 minutes after -- the 20 response time is 41 minutes after the response 21 time for the other one? 22 A. Correct. 23 Q. And the reason that this example is 24 here is because the finish time is the same?</p>	<p style="text-align: right;">Page 219</p> <p>1 January 2011, correct? 2 A. Yes. 3 Q. So this would be after those changes 4 took place, right? 5 A. I believe that's correct. 6 Q. Okay. So the response time which is 7 the date and time that counted under the 8 original incentive fee plan is 41 minutes 9 different, correct? 10 A. Yes, it is, still shows same guy at two 11 different places for 19 minutes, but yeah, the 12 first part doesn't overlap. 13 Q. Okay. 14 A. The first 41 minutes. 15 Q. So that's how you put this together, 16 examples like this would be examples where the 17 same guy is in two different places at the same 18 time? 19 A. If you look at -- I mean, look at the 20 one above it, the same -- same situation -- 21 Q. What do you think is more realistic, 22 that the guy was actually in two places at the 23 same time or that the finish time, the time that 24 didn't count on Pinnacle's incentive fee plan,</p>
<p style="text-align: right;">Page 218</p> <p>1 A. No, it's because they overlap for more 2 than 15 minutes at two different units on the 3 same day. 4 Q. But there's 41 minutes where they don't 5 overlap? 6 A. That's correct. 7 Q. Okay. And the criteria on which 8 Pinnacle's incentive fee was measured, it wasn't 9 measured as of January 2011, but it was measured 10 was response time, correct? 11 A. The last part of your question I would 12 agree to. I didn't get the first part on what 13 it wasn't measured by. I wasn't following that. 14 Q. Well, you're aware that changes were 15 made to Pinnacle's incentive plan, correct? 16 A. Yes. 17 Q. And those changes purportedly took 18 place for the year beginning January 2010 at 19 Monterey, correct? 20 A. I think that's right. 21 Q. And Mr. Merrill and Mr. Perez worked at 22 Monterey, correct? 23 A. Yes. 24 Q. And this work order is dated</p>	<p style="text-align: right;">Page 220</p> <p>1 was carelessly entered? 2 A. Well, I -- what I can say is that 3 definitively a person can't be in two physical 4 places at one time. As to how it was entered, I 5 can only say what the result of how the data was 6 entered shows which is 1,025 pairs at Monterey 7 over a long period of time where two people -- 8 one person is at two different places at the 9 same time in light of the criteria that I used. 10 Q. Mr. Dudney, I thought that you were 11 doing this analysis to show corroboration of 12 people changing response times falsely in Yardi. 13 A. There were I believe -- there were also 14 again allegations with respect to some of the 15 changes that took place that led to occurrences 16 where two people would be at the same place at 17 the same time which obviously was an 18 impossibility, and so there were statements in 19 that regard and so I just had heard about that, 20 and so one of the things I did was look at both 21 Monterey and Irwin to see if that phenomena 22 occurred and that's what generated -- 23 Q. I'm sorry. The -- the time that 24 mattered for Pinnacle's incentive fee was what</p>

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<p style="text-align: right;">Page 221</p> <p>1 time?</p> <p>2 A. Which location are you talking about?</p> <p>3 Q. Both locations, Mr. Dudney.</p> <p>4 A. It's -- it's the response time.</p> <p>5 Q. Right. And it's always been the</p> <p>6 response time for those two locations, right?</p> <p>7 A. Yes, to my understanding.</p> <p>8 Q. No other time matters, correct?</p> <p>9 MS. WELCH: Objection to form.</p> <p>10 THE WITNESS: I believe that's correct.</p> <p>11 BY MR. DUTTON:</p> <p>12 Q. So as far as Pinnacle's incentive fee,</p> <p>13 if you wanted to change data in Yardi to</p> <p>14 increase Pinnacle's incentive fee, you could</p> <p>15 change the response time, correct?</p> <p>16 A. If you changed the response time to</p> <p>17 make something a fail to a pass, you could</p> <p>18 influence it that way if it was done correctly.</p> <p>19 Q. Changing the actual time or the finish</p> <p>20 time wouldn't make any difference, correct?</p> <p>21 A. That's correct. It's only the response</p> <p>22 time that matters for purposes of the incentive</p> <p>23 fee as I understand it.</p> <p>24 Q. It could be very well accurate that</p>	<p style="text-align: right;">Page 223</p> <p>1 5:00 o'clock per Yardi.</p> <p>2 Q. What he says is he responded to both of</p> <p>3 those, and that's the --- that's the date and</p> <p>4 time that matters as far as the incentive fee is</p> <p>5 concerned, right, Mr. Dudney?</p> <p>6 A. I would agree that the response time is</p> <p>7 what drives the incentive fee.</p> <p>8 Q. And that's what Pinnacle employees are</p> <p>9 alleged to have done, right, changed data in</p> <p>10 Yardi to increase Pinnacle's incentive fee?</p> <p>11 A. Well, it's what some of them have said</p> <p>12 they have done and then there are also</p> <p>13 allegations --</p> <p>14 Q. And that's what you were attempting to</p> <p>15 see what was corroborated, right?</p> <p>16 A. Those were the general set of</p> <p>17 allegations that I was looking at.</p> <p>18 Is now a good time for a break?</p> <p>19 MR. DUTTON: Sure.</p> <p>20 THE WITNESS: Thanks.</p> <p>21 THE VIDEOGRAPHER: This is the end of DVD</p> <p>22 No. 4. We are off the record at 2:50 p.m.</p> <p>23 (WHEREUPON, a short break was</p> <p>24 taken.)</p>
<p style="text-align: right;">Page 222</p> <p>1 work -- the first work order in row 1025 was</p> <p>2 responded to at 4:00 p.m. on January 10th, 2011,</p> <p>3 right?</p> <p>4 A. I'm sorry. You're talking about work</p> <p>5 order No. 1388700?</p> <p>6 Q. Yes.</p> <p>7 A. And I'm sorry. The question again was?</p> <p>8 Q. It could be entirely correct that that</p> <p>9 work order was responded to by Mr. Perez at</p> <p>10 4:00 p.m. on January 10th, 2011?</p> <p>11 A. Could be.</p> <p>12 Q. And 41 minutes later, he could have</p> <p>13 responded to work order 1387880 at a -- at a</p> <p>14 nearby home on the same day, correct?</p> <p>15 A. You're asking me if it's possible?</p> <p>16 Q. Yes.</p> <p>17 A. Sure, it's possible. It's not what's</p> <p>18 recorded in Yardi, but it's possible.</p> <p>19 Q. Well, it is what's recorded in Yardi,</p> <p>20 isn't it, that he responded to the first work</p> <p>21 order at 4:00 p.m. and he responded to the</p> <p>22 second one at 4:41 p.m.?</p> <p>23 A. While he was still at the first unit</p> <p>24 and reported that he was there until</p>	<p style="text-align: right;">Page 224</p> <p>1 (WHEREUPON, DUDNEY Deposition</p> <p>2 Exhibit No. 012 was marked for</p> <p>3 identification.)</p> <p>4 THE VIDEOGRAPHER: Here begins DVD No. 5. We</p> <p>5 are on the record at 3:00 p.m.</p> <p>6 BY MR. DUTTON:</p> <p>7 Q. I'm handing you, Mr. Dudney, what's</p> <p>8 been marked as Exhibit 012. Exhibit 012 is a</p> <p>9 complete version of Exhibit 8 from your report,</p> <p>10 all 19 pages are reproduced.</p> <p>11 A. Yes, I see all 19 pages, and it appears</p> <p>12 to be Exhibit 8 which is being marked as Dudney</p> <p>13 Exhibit 012 to Dudney Deposition Exhibit</p> <p>14 No. 001.</p> <p>15 Q. I hope that clarified things. I'm not</p> <p>16 sure that it did.</p> <p>17 A. It may not have.</p> <p>18 Q. Well, Deposition Exhibit 012 is</p> <p>19 essentially the same type of analysis that we</p> <p>20 just looked at in Deposition Exhibit 011 except</p> <p>21 it is for Irwin, Moffett and Parks, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And in this exhibit, you analyze</p> <p>24 602 pairs of work orders, correct?</p>

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<p style="text-align: right;">Page 225</p> <p>1 A. Yes.</p> <p>2 Q. And I want to ask you just about a few</p> <p>3 of them, Mr. Dudney.</p> <p>4 A. Okay.</p> <p>5 Q. Take a look at the rows that are marked</p> <p>6 as rows 10. There are two of them. Do you see</p> <p>7 that?</p> <p>8 A. Yes, with --</p> <p>9 Q. Work orders 1529280?</p> <p>10 A. Yes.</p> <p>11 Q. And 1529431. Do you see those?</p> <p>12 A. Yes, I do.</p> <p>13 Q. The first work order that -- based on</p> <p>14 call date is work order 1529280, right?</p> <p>15 A. Correct.</p> <p>16 Q. And that came in on October 31st at</p> <p>17 8:00 a.m., correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the actual start time and date for</p> <p>20 that work order is 10:09 a.m. Do you see that?</p> <p>21 A. I think it says 11:09.</p> <p>22 Q. 11:09, sorry.</p> <p>23 A. Yes.</p> <p>24 Q. And the next work order or its pair,</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. And he could have completed that work</p> <p>2 order and then gone back and completed the</p> <p>3 second work order all within the time parameters</p> <p>4 that are on Exhibit -- Deposition Exhibit 012?</p> <p>5 A. I can't -- without looking back at more</p> <p>6 detail to respond to your question, I can't</p> <p>7 answer any more other than it is possible, but I</p> <p>8 don't know without looking at a map, you know,</p> <p>9 the proximity of the two units and/or the nature</p> <p>10 of the problem to see if, in fact, it could be</p> <p>11 done.</p> <p>12 Q. Well, take a look at the example in</p> <p>13 rows 13. Do you see that?</p> <p>14 A. One second. Let me mark those. Okay.</p> <p>15 Q. So the first example for Exhibit 13 is</p> <p>16 a work order that was called in at 5:34 a.m. --</p> <p>17 A. Yes.</p> <p>18 Q. -- on July 3rd, 2006. Do you see that?</p> <p>19 A. Correct.</p> <p>20 Q. And does the fact that it was called in</p> <p>21 at 5:34 a.m. on July 3rd, 2006, indicate to you</p> <p>22 that it's either an urgent or an emergency?</p> <p>23 A. No.</p> <p>24 Q. No?</p>
<p style="text-align: right;">Page 226</p> <p>1 the call time for that is 11:27 a.m.</p> <p>2 A. Yes.</p> <p>3 Q. And according to that work order, the</p> <p>4 actual start time was 11:25 a.m. which is two</p> <p>5 minutes earlier. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. You're not going to quibble about two</p> <p>8 minutes, are you?</p> <p>9 A. I don't make an observation with</p> <p>10 respect to two minutes one way or the other.</p> <p>11 Q. Okay. But the second work order starts</p> <p>12 approximately 15 minutes after the first one</p> <p>13 starts, right?</p> <p>14 A. Approximately.</p> <p>15 Q. And finishes approximately 23 minutes</p> <p>16 before the second one ends, right?</p> <p>17 A. Yes.</p> <p>18 Q. Now, it's entirely possible, is it not,</p> <p>19 that Mr. Arias who was out performing the first</p> <p>20 work order got a call from wherever that he</p> <p>21 needed to stop what he was doing and go over and</p> <p>22 do a second work order that was a higher</p> <p>23 priority work order, correct?</p> <p>24 A. Is it possible? Yes, it's possible.</p>	<p style="text-align: right;">Page 228</p> <p>1 A. I mean, it might be, but that -- just a</p> <p>2 sheer call time itself doesn't necessarily tell</p> <p>3 me that.</p> <p>4 Q. The work order is scheduled at -- or</p> <p>5 the work order is actually started at 8:00 a.m.?</p> <p>6 A. Correct.</p> <p>7 Q. And is completed at 9:30 a.m.?</p> <p>8 A. Correct.</p> <p>9 Q. And then the second work order, that</p> <p>10 call came in at 6-29 -- on 6-29-06 and the</p> <p>11 actual start time for that work order is</p> <p>12 8:50 a.m. which is approximately 50 minutes</p> <p>13 after the first work order, right?</p> <p>14 A. Correct.</p> <p>15 Q. And the second work order, work order</p> <p>16 198510 is completed according to this document</p> <p>17 at 9:10 a.m.?</p> <p>18 A. Correct.</p> <p>19 Q. Which is 20 minutes before the prior</p> <p>20 work order was completed at 9:30 a.m.?</p> <p>21 A. Correct.</p> <p>22 Q. So again, this is actually the reverse</p> <p>23 situation where apparently there's a more urgent</p> <p>24 work order that is scheduled first, that work</p>

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<p style="text-align: right;">Page 229</p> <p>1 order is interrupted and then the scheduled work</p> <p>2 order is performed and then the tech could have</p> <p>3 gone back and completed the first work order</p> <p>4 that was started earlier, correct?</p> <p>5 A. I wouldn't agree with that. I don't</p> <p>6 think that -- unless we look at the actual work</p> <p>7 order documents or Yardi itself, you can't tell</p> <p>8 just based on the data that's on the face of</p> <p>9 this exhibit the -- I don't believe I've got the</p> <p>10 priority here, so I don't know that we can</p> <p>11 conclude dispositively that just because it came</p> <p>12 in at 5:34 a.m. that that necessarily means that</p> <p>13 it was a higher priority work order and nor can</p> <p>14 you conclude the opposite which is just because</p> <p>15 the -- the one that was called in -- the second</p> <p>16 of the pair that was called in at 11:56 a.m. and</p> <p>17 it was conducted per Yardi or was completed as</p> <p>18 of 7-3, that that necessarily meant that it was</p> <p>19 not a more urgent one.</p> <p>20 Q. Well, have you dug down into those work</p> <p>21 orders, Mr. Dudney, to look at them and see</p> <p>22 whether that's -- whether this is a possible</p> <p>23 scenario?</p> <p>24 A. I've looked at data related to all</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. And they were both last updated on</p> <p>2 September 30th, 2005, right?</p> <p>3 A. Correct.</p> <p>4 Q. So -- so literally a day after the call</p> <p>5 where responded to, they were last updated in</p> <p>6 Yardi, correct?</p> <p>7 A. Correct.</p> <p>8 Q. By the same person?</p> <p>9 A. Yes.</p> <p>10 Q. And so on -- with respect to the first</p> <p>11 row 22, the work order was responded to at</p> <p>12 2:40 p.m. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And according to the second work order,</p> <p>15 the work order was responded to at 3:55 p.m. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. How does this support or corroborate</p> <p>19 allegations that people were changing response</p> <p>20 times in Yardi to increase an incentive fee,</p> <p>21 Mr. Dudney?</p> <p>22 A. This only goes -- this analysis and its</p> <p>23 companion which is Dudney Exhibit 011 to the</p> <p>24 deposition here today, analyzes the data with</p>
<p style="text-align: right;">Page 230</p> <p>1 these. I've just -- I've only included the data</p> <p>2 that I've got here, so I just can't recall the</p> <p>3 specifics of individual work orders without</p> <p>4 pulling it up in Yardi.</p> <p>5 Q. You know, now, both of these were last</p> <p>6 updated by Midi Lopez. One of them was updated</p> <p>7 in July of 2006. The second one which is --</p> <p>8 which two days after it --</p> <p>9 A. Correct.</p> <p>10 Q. -- was responded to?</p> <p>11 A. Yes.</p> <p>12 Q. And the second one was updated in March</p> <p>13 of 2007. Do you see that?</p> <p>14 A. Yes, March 13th of 2007.</p> <p>15 Q. Have you looked at the update to see</p> <p>16 exactly what data was changed?</p> <p>17 A. I believe that we have. I just --</p> <p>18 again, as I sit here today, I can't recall the</p> <p>19 specific of individual work orders like that.</p> <p>20 Q. Okay. Take a look at row 22,</p> <p>21 Mr. Dudney -- or should I say rows 22 and</p> <p>22 these -- these calls both came in on</p> <p>23 September 29th, 2005. Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 232</p> <p>1 respect to allegations that were made or</p> <p>2 descriptions that were given as part of the</p> <p>3 allegations that were made that because of</p> <p>4 changes that were being made to Yardi data</p> <p>5 that -- some of the circumstances that took</p> <p>6 place or what resulted was the impossible and</p> <p>7 that was that two -- the data showed that the</p> <p>8 same tech was at two different physical</p> <p>9 locations at the same time, and so that would be</p> <p>10 a -- a consequence of inaccurate data being put</p> <p>11 into -- into the system. And I believe there's</p> <p>12 at least one declarant who says that this</p> <p>13 occurred as a result of changes that were being</p> <p>14 made to try and make fails into passes, that</p> <p>15 that was one of the consequences of that. So I</p> <p>16 was curious to see how many times -- or how</p> <p>17 often the data demonstrated that there were, in</p> <p>18 fact, two techs at the same place -- or I'm</p> <p>19 sorry, two techs -- the same tech at two</p> <p>20 different places at the same time. Let me get</p> <p>21 that right.</p> <p>22 Q. But it's entirely plausible that the</p> <p>23 response times could be accurate for both of</p> <p>24 these, right, the response times don't overlap?</p>

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<p style="text-align: right;">Page 233</p> <p>1 A. Well, the response time for the second 2 one comes during a period where the tech was 3 supposedly at the first location, so they 4 overlap in that respect that there's two places, 5 the second place being responded to while 6 supposedly the tech was still at the first 7 place. 8 Q. Which one of these response times was 9 falsified to increase Pinnacle's pass 10 percentage, Mr. Dudney, the first one or the 11 second one? 12 A. I -- I didn't conduct the analysis that 13 way. I just looked for circumstances where 14 there were -- whether or not and to what extent 15 there were -- there was a prevalence of 16 duplicates, if you will. 17 Q. Isn't that the allegation of this 18 complaint that you're supposedly analyzing? 19 A. The allegation was that changes were 20 being made to Yardi and that some of the effects 21 of that -- and that those changes were being 22 made to increase the pass/fail results. One of 23 the observations, though, was that the -- one of 24 the what I'll call unintended consequences was</p>	<p style="text-align: right;">Page 235</p> <p>1 I'm left to do is look at the data in Yardi. I 2 don't know as I sit here today whether that 3 particular pair at row 22 has backup 4 handwritten -- backup -- or I should say 5 supporting paper work orders that have 6 handwritten notations on them or not. I would 7 have to check our files to determine that. 8 Q. You don't know whether the time that 9 was entered for row -- the row 22 work orders, 10 the response time, was falsified one way or the 11 other, do you? 12 A. I don't know if -- I can't say just 13 based on the face of this that with a hundred 14 percent certainty that the response time was 15 falsified. What I can say is that it's 16 impossible for the same person to be at two 17 different locations at the same time, so the 18 data is -- is creating an impossibility and 19 that's what the purpose of I think Dudney 20 Exhibit 012 was designed to do was to check for 21 that to see given the controls that we put in 22 place, would we still identify numerous 23 situations where that impossibility occurred in 24 light of the allegations that were being made</p>
<p style="text-align: right;">Page 234</p> <p>1 that there would be circumstances whereby the 2 same technician was shown at the same -- or 3 different places at the same time and so I was 4 looking to find instances of that and that's 5 what Exhibit 8 does -- I'm sorry, Exhibit 8 to 6 my report which is Dudney Deposition Exhibit 7 012. 8 Q. But the pair at row 22 doesn't -- 9 doesn't give you any information about whether 10 or not the response time, which is in the column 11 that you've identified as actual start 12 date/time -- sorry, actual start time/date, 13 doesn't give you any information about whether 14 either of those was allegedly falsified, 15 correct? 16 A. We'd have to look at it to see if I 17 have actual paper work orders for that because 18 part of the issue is that, number one, I don't 19 have paper work orders for all of the data that 20 I have in Yardi, and then obviously there are -- 21 I mean, there's a lot of reasons why I might not 22 have the underlying paper work order information 23 that would allow me to evaluate each of these 24 beyond the data that's in Yardi, so then what</p>	<p style="text-align: right;">Page 236</p> <p>1 and we found that 1,025 times in one case and -- 2 Q. So your testimony is it's impossible 3 for Mr. Gonzalez to start a work order at 4 2:40 p.m., take a break and go to another work 5 order at 3:55 p.m., complete that second work 6 order at 4:20 and then return to the first one 7 and complete it at 4:40? Do you believe that's 8 impossible? 9 A. That's not what I testified to. 10 Q. Well, I thought I heard you use the 11 word impossible, Mr. Dudney. 12 A. I did as to -- you can't -- 13 Q. If the data said that this was -- 14 MS. WELCH: Can you let him finish please, 15 Mr. Dutton? 16 THE WITNESS: It's impossible for a person to 17 be at two places at one time. That was what I 18 testified to. 19 BY MR. DUTTON: 20 Q. Take a look at row 29 -- sorry, not row 21 29. Row -- the row 28s. 22 A. Row 28, okay. 23 Q. I'm getting tired. 24 Oh, sorry. 25. I just circled it</p>

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<p style="text-align: right;">Page 237</p> <p>1 before I asked the question. Do you have row 25</p> <p>2 in front of you?</p> <p>3 A. Yeah, let me just mark them so I don't</p> <p>4 get them confused. Okay.</p> <p>5 Q. Okay. Now -- so row 25 involves two</p> <p>6 work orders that came in on January 1st, 2006,</p> <p>7 right?</p> <p>8 A. Oh, I'm sorry. You're at 25. I was</p> <p>9 looking at 22 again.</p> <p>10 Q. 25.</p> <p>11 A. 25, okay. What date did you say?</p> <p>12 Q. January 1st, 2006.</p> <p>13 A. Got it.</p> <p>14 Q. One work order comes in 6:15 p.m., the</p> <p>15 other comes in at 6:53 p.m., right?</p> <p>16 A. Correct.</p> <p>17 Q. How many techs worked the after-hours</p> <p>18 shift at Fort Irwin, Mr. Dudney?</p> <p>19 A. I can't testify as to how many they did</p> <p>20 at any point in time.</p> <p>21 Q. And how did they keep track of their</p> <p>22 time?</p> <p>23 A. I believe that they had -- they still</p> <p>24 deployed tracking logs.</p>	<p style="text-align: right;">Page 239</p> <p>1 can't tell one way or the other whether the</p> <p>2 tracking sheets were off or the tech was off or</p> <p>3 what? There's not a paper work order for each</p> <p>4 work order, is there?</p> <p>5 A. Again, I -- well, I don't believe that</p> <p>6 I have a paper work order with handwritten notes</p> <p>7 for every instance on Dudney Deposition</p> <p>8 Exhibit 012, so, you know, this -- this one we'd</p> <p>9 have to look back in the production to see if</p> <p>10 that kind of a paperwork order exists for it,</p> <p>11 but I don't know as I sit here today whether or</p> <p>12 not that exists.</p> <p>13 Q. All right. And did you -- well, this</p> <p>14 is for Fort Irwin, right?</p> <p>15 A. Correct.</p> <p>16 Q. And I think you said you were doing</p> <p>17 this analysis because of the allegation that</p> <p>18 people were entering false information into</p> <p>19 Yardi to change the response time and,</p> <p>20 therefore, increase Pinnacle's incentive fee?</p> <p>21 A. It was that premise, but then it -- the</p> <p>22 point was -- and the reason I did this is</p> <p>23 because as a consequence of that alleged</p> <p>24 allegation, there was -- there were statements</p>
<p style="text-align: right;">Page 238</p> <p>1 Q. When -- when a call came in after</p> <p>2 hours, they didn't get a printed work order,</p> <p>3 right?</p> <p>4 A. I believe that that certainly can be</p> <p>5 the case. I don't know if that was the case on</p> <p>6 all situations, but that was certainly a</p> <p>7 possibility.</p> <p>8 Q. And typically there were -- there was</p> <p>9 not a full staff during the overnight hours,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. And only urgent and emergency work</p> <p>13 orders were responded to during the overnight</p> <p>14 work hours, correct?</p> <p>15 A. That's -- that's my understanding.</p> <p>16 Q. And it wouldn't be unusual if there</p> <p>17 were limited staff for a person to respond to</p> <p>18 one work order and then respond to another work</p> <p>19 order later?</p> <p>20 A. It certainly could be that one person</p> <p>21 could respond to two work orders, one earlier</p> <p>22 and one later, sure.</p> <p>23 Q. And since there were no work orders --</p> <p>24 there's only work order tracking sheets, you</p>	<p style="text-align: right;">Page 240</p> <p>1 made in -- at least by one declarant, if not</p> <p>2 more, that it would sometimes create a situation</p> <p>3 where the data would then show the same tech at</p> <p>4 two places at the same time.</p> <p>5 Q. And that declarant was Mr. Weber?</p> <p>6 A. I believe that's correct.</p> <p>7 Q. Now, there's a lot of entries on here</p> <p>8 for work orders that were called in and</p> <p>9 performed after January 1st, 2008, aren't there?</p> <p>10 A. Yeah, they're not sorted in a way that</p> <p>11 would easily let me quantify it, but certainly</p> <p>12 just eyeballing it, looking at the call date and</p> <p>13 the call time, I think it spans -- I mean,</p> <p>14 there's activity across the board I've got on</p> <p>15 this page which is 13 of 19, for example, I've</p> <p>16 got calls times in '11, call times in '06, '07,</p> <p>17 '08.</p> <p>18 Q. I just asked, Mr. Dudney, whether there</p> <p>19 were a lot of them on there that were after</p> <p>20 January 1, 2008. Do we agree on that?</p> <p>21 A. I think that there are. Yes, I think</p> <p>22 there are a fair number of them.</p> <p>23 Q. Can we also agree that after January 1,</p> <p>24 2008, response times were no longer used to</p>

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<p style="text-align: right;">Page 241</p> <p>1 calculate Pinnacle's incentive?</p> <p>2 MS. WELCH: Objection to form, calls for a</p> <p>3 legal conclusion.</p> <p>4 THE WITNESS: My understanding is that there</p> <p>5 was some modification which occurred that</p> <p>6 resulted in it not being utilized after that</p> <p>7 point in time.</p> <p>8 BY MR. DUTTON:</p> <p>9 Q. That wasn't my question. I wasn't</p> <p>10 asking a legal question. I was just asking</p> <p>11 Pinnacle no longer used response time to support</p> <p>12 its claim for an incentive fee after January 1,</p> <p>13 2008, right?</p> <p>14 A. That's -- for the time periods that</p> <p>15 would be covered prior to that, that's my -- or</p> <p>16 subsequent to that date, that's my understanding</p> <p>17 is that they no longer used that.</p> <p>18 Q. So falsifying response times in Yardi</p> <p>19 after January 1, 2008, wouldn't give Pinnacle</p> <p>20 any extra incentive fee, would it?</p> <p>21 A. If it's not being used, then I think by</p> <p>22 definition it couldn't. It would obviously</p> <p>23 change the performance statistics to the extent</p> <p>24 that anyone is looking at those, but it wouldn't</p>	<p style="text-align: right;">Page 243</p> <p>1 sometime. With respect to Monterey, you have a</p> <p>2 graph.</p> <p>3 A. You're on page?</p> <p>4 Q. Page 31.</p> <p>5 A. Yes.</p> <p>6 Q. Which is a comparison of the monthly to</p> <p>7 annual pass/fail percentage January 2006 to June</p> <p>8 of 2007. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And you're generally familiar, aren't</p> <p>11 you, with the fact that at Monterey there were</p> <p>12 two discreet periods of time when a large amount</p> <p>13 of data in Yardi was updated?</p> <p>14 A. I'm generally aware that there were</p> <p>15 periods of time where there was more activity</p> <p>16 with respect to updating because of the timing</p> <p>17 of the incentive fee, you know, calculation</p> <p>18 preparation.</p> <p>19 Q. Isn't it correct that there were a</p> <p>20 large number of updates made to the data in</p> <p>21 Yardi at Monterey in the June and July of 2007</p> <p>22 period when the incentive fee data for the</p> <p>23 preceding year 2006 was being prepared?</p> <p>24 A. Yes, that I believe is correct.</p>
<p style="text-align: right;">Page 242</p> <p>1 go to the incentive fee if it was no longer</p> <p>2 being used for that.</p> <p>3 Q. Did you need to just go past January 1,</p> <p>4 2008, to boost the numbers in your analysis?</p> <p>5 A. No, I didn't -- I didn't put a limiter</p> <p>6 on the date whatsoever because the data was what</p> <p>7 it was, so I looked across the entire population</p> <p>8 of data.</p> <p>9 Q. Data from after January 1, 2008, does</p> <p>10 not support your -- the assertions that you're</p> <p>11 trying to corroborate, does it?</p> <p>12 A. It -- well, it certainly continues to</p> <p>13 demonstrate that -- that data being put into</p> <p>14 Yardi is demonstrating what is -- given the</p> <p>15 start and stop times of the -- that are</p> <p>16 included, something that's physically impossible</p> <p>17 to have the same tech at two locations, and so</p> <p>18 that's what it was designed to do. And I didn't</p> <p>19 limit it as to its time period where I show</p> <p>20 those. I looked at it for the entire set of</p> <p>21 population of data that I had.</p> <p>22 Q. With respect to page -- let's move on</p> <p>23 to Monterey, Mr. Dudney, because I think we've</p> <p>24 discussed Irwin, Moffett and Parks for quite</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. And isn't it also true that in December</p> <p>2 of 2007, there were a number of updates made to</p> <p>3 the work order data in Yardi for the first half</p> <p>4 of 2007?</p> <p>5 A. Again, subject to check I believe</p> <p>6 that's also correct.</p> <p>7 Q. And those two discreet periods are the</p> <p>8 two discreet periods from which the lion's share</p> <p>9 of your examples with respect to Monterey comes?</p> <p>10 A. A lot of them come from that period.</p> <p>11 Q. And that -- those two periods of time</p> <p>12 kind of correspond with the gap between the</p> <p>13 annual and the monthly pass/fail report that's</p> <p>14 on Page 31, right?</p> <p>15 A. Yes, there's a lot of updates that</p> <p>16 would go to that gap that you see there on that</p> <p>17 chart.</p> <p>18 Q. And did you do any research or any</p> <p>19 digging into the data to see if you could find</p> <p>20 an explanation for the gap between the monthly</p> <p>21 and annual pass/fail percentage that's shown to</p> <p>22 go from roughly June of 2006 to July of 2007?</p> <p>23 A. I -- I looked at --</p> <p>24 Q. Or May of 2007?</p>

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<p style="text-align: right;">Page 245</p> <p>1 A. Yeah, I looked at a number of different 2 pieces of information with respect to everything 3 from statements to deposition testimony to 4 e-mails and correspondence and of course the 5 data itself to try and understand what was 6 occurring here as part of the analysis that 7 I did. 8 Q. And you understand that in June and 9 July of 2007, Mr. Somerville was putting 10 together his data package for the 2006 incentive 11 fee and that was the first time that 12 Mr. Somerville had used either the pass/fail 13 report or had submitted an incentive fee 14 package, right? 15 A. I think that's right. 16 Q. And you understand that Mr. Somerville 17 actually had to ask Darin Singh of Clark, hey, 18 which reports from Yardi did you use last year 19 in order to calculate the incentive fee, right? 20 A. I don't recall if he asked Mr. Singh or 21 not, but he may have. 22 Q. And Mr. Singh actually pointed him 23 towards the report that he should use. Do you 24 recall that?</p>	<p style="text-align: right;">Page 247</p> <p>1 the beginning of this section. 2 Q. Well, I'm going to compare it to the 3 graph on Page 31 if you want context. 4 A. Okay. 5 Q. Now, the graph on 31 compares the 6 monthly pass/fail report for June of 2006 to the 7 annual for June of 2006, right? 8 A. Correct. 9 Q. And you know from your work that 10 because of the June fails memo and because it 11 was passed around to Mr. Merrill, Mr. Anderson 12 and Mr. McDaniel, that there were corrections 13 made to the pass/fail report or updates made, 14 however you want to put it, to -- to change the 15 information, correct? 16 A. There were -- there were changes made 17 to the Yardi data that impacted the -- the 18 pass/fails. 19 Q. And am I right -- I mean -- and it's 20 hard for me to understand, but am I right that 21 if you draw a line from June 2006 up, in June 22 of 2006 the annual pretty much matches the 23 monthly? 24 A. Yes.</p>
<p style="text-align: right;">Page 246</p> <p>1 A. I don't recall one way or the other on 2 that. 3 Q. Well, you discuss in your -- in your 4 report a document that you found which attaches 5 a spreadsheet that's called June 2006 fails or 6 Junefails.xls. Do you see that? 7 A. Yeah, if you don't mind, let me just 8 quickly buzz through starting on Page 30 this 9 section just to get my -- speed our Q and A on 10 this. 11 Q. I think the first time you mention it 12 is on Page 35. 13 A. Okay. Let me just quickly read this. 14 MR. DUTTON: Could you just mark the time? 15 (3:29 p.m.) 16 BY MR. DUTTON: 17 Q. Mr. Dudney, do you have my question in 18 mind? 19 A. You were asking me about the June -- 20 the June e-mail that I referenced? 21 Q. Right. You reference it on Page 35; is 22 that correct? 23 A. Yes, and I'm just trying to get a 24 context for it here leading up to it just from</p>	<p style="text-align: right;">Page 248</p> <p>1 Q. Okay. 2 A. And noting that -- and there's a 3 footnote on it, but just to be clear, it's just 4 Footnote 82 that I would just draw your 5 attention to that -- with respect to that is 6 that one thing that this comparison does, it 7 does what you described. It just compared the 8 monthly pass/fail report to the annual pass/fail 9 report and it does in June show roughly the same 10 number for all intents and purposes recognizing 11 as Footnote 82 describes that the monthly would 12 not reflect any updates that would have changed 13 and otherwise failing reported to a pass prior 14 to the creation of the monthly, so just as a 15 concept -- 16 Q. Well, that's what I'm suggesting. What 17 this shows, doesn't it, is that when they 18 reviewed the monthly work orders in June 19 of 2007 -- or 2006 and updated them, you know, 20 the updates resulted in the annual matching the 21 monthly? 22 A. Well, it by definition would unless 23 there was another set of changes, right, because 24 if you had done updates to something to change</p>

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<p style="text-align: right;">Page 249</p> <p>1 monthly to annual, then it would bring -- it</p> <p>2 would make one -- they would become one and the</p> <p>3 same in that regard.</p> <p>4 Q. Right. So my question -- and they did</p> <p>5 those updates contemporaneously in June of 2006</p> <p>6 after they passed out the Junefails.xls document</p> <p>7 that you discuss on Page 35?</p> <p>8 A. Let me just look here.</p> <p>9 Q. You state that Junefails.xls X file</p> <p>10 included 253 of the 255 work orders that were</p> <p>11 changed to passes for the June 2006 monthly</p> <p>12 pass/fail report.</p> <p>13 A. Yeah -- I'm sorry. I just want to read</p> <p>14 this paragraph.</p> <p>15 Okay. And if I could have the question</p> <p>16 read back after I just read those two</p> <p>17 paragraphs.</p> <p>18 (WHEREUPON, the record was read</p> <p>19 by the reporter as requested.)</p> <p>20 THE WITNESS: It's a July 10th e-mail, so I</p> <p>21 think it was done in July of 2006, not June</p> <p>22 of 2006.</p> <p>23 BY MR. DUTTON:</p> <p>24 Q. Do you know when the monthly pass/fail</p>	<p style="text-align: right;">Page 251</p> <p>1 pass/fail report was updated within a few days</p> <p>2 after the end of the month other than June which</p> <p>3 you reported on?</p> <p>4 A. Yeah, that's the one that -- that is in</p> <p>5 my mind, not to say that there aren't other</p> <p>6 ones, but that's the one that I pointed to in</p> <p>7 this report.</p> <p>8 Q. And the data, the comparison of the</p> <p>9 monthly to the annually, the only one of those</p> <p>10 dates or months where there is a -- pretty much</p> <p>11 a match is June of 2006, right?</p> <p>12 A. Yeah, which is not surprising in light</p> <p>13 of if the -- if the annual reflects the changes,</p> <p>14 then you would expect it that those two would</p> <p>15 match up to the changes are made --</p> <p>16 Q. I think we're in agreement on that.</p> <p>17 A. Yeah.</p> <p>18 Q. And my question is, did you identify</p> <p>19 anything that happened in May of 2005 that would</p> <p>20 have caused the sudden divergence from --</p> <p>21 between the annual and the monthly pass/fail</p> <p>22 reports?</p> <p>23 A. May of 2005?</p> <p>24 Q. Yeah.</p>
<p style="text-align: right;">Page 250</p> <p>1 reports were provided to the owner?</p> <p>2 A. I don't know the exact date.</p> <p>3 Q. It was not at the -- exactly on the end</p> <p>4 of the month. Wasn't there a reporting date</p> <p>5 that occurred sometime after?</p> <p>6 A. I think the answer is yes. I don't</p> <p>7 know the exact date.</p> <p>8 Q. My -- my question is this: For all of</p> <p>9 the other months in 2006 and for the first</p> <p>10 quarter of 2007, so May of '06, July through</p> <p>11 December of '06, January, February, March,</p> <p>12 et cetera, of '07, you didn't find any examples,</p> <p>13 any further examples of efforts to update the</p> <p>14 monthly pass/fail report, did you?</p> <p>15 MS. WELCH: Objection to form.</p> <p>16 THE WITNESS: I found the ones that I've</p> <p>17 identified here. I'm not sure how else to</p> <p>18 answer your question. I mean, this was a</p> <p>19 particular instance where I found an e-mail and</p> <p>20 was able to analyze because of the nature of the</p> <p>21 Excel file the activity --</p> <p>22 BY MR. DUTTON:</p> <p>23 Q. Listen to my question. You didn't find</p> <p>24 any other months in 2006 or 2007 where a monthly</p>	<p style="text-align: right;">Page 252</p> <p>1 A. 2005 is not on this chart.</p> <p>2 Q. Sorry, May of 2006. I get confused by</p> <p>3 the month of May.</p> <p>4 A. Okay. Sorry.</p> <p>5 Q. May of 2006, that's the first month</p> <p>6 where there's a big drop and a gap between the</p> <p>7 monthly and the annual, right?</p> <p>8 A. There is a -- that's the -- for the</p> <p>9 data that's included on this chart, that would</p> <p>10 be the first month, I mean, the -- January '06</p> <p>11 has some kind of a difference, but there's a --</p> <p>12 visibly a larger difference for May of 2006.</p> <p>13 Q. And then the difference goes even</p> <p>14 larger in July and August and September and</p> <p>15 October and November all the way through</p> <p>16 January 2001 -- sorry, 2007, right?</p> <p>17 A. Yeah, I think from January 2007, that</p> <p>18 data point, there's still a large gap, and then</p> <p>19 starting in February of 2007, it's much closer</p> <p>20 and I would say that the lines after that are</p> <p>21 much more consistent.</p> <p>22 Q. And -- and this is really the only year</p> <p>23 where you've kind of found this pattern where</p> <p>24 there was a wide discrepancy -- or the only</p>

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<p style="text-align: right;">Page 253</p> <p>1 period of time, I guess is a better question, 2 where there was a wide discrepancy between the 3 monthly results and the annual results? 4 A. Well, we focused on this period in part 5 because of the additional data we had with 6 respect to as you've pointed out the -- the 7 information that we had in terms of the 2006 8 e-mail and what happened that I talk about in my 9 report, so that's why I think we captured this 10 data. I'm not -- I'd have to look back at the 11 data, Mr. Dutton, to see if there were other 12 periods where I've got both the annual and the 13 monthly to see how close they are. 14 Q. Did you investigate or did anyone ask 15 whether the discrepancies between the monthly 16 pass/fail reports and the annual pass/fail 17 reports and the updates to the 2006 data and 18 first quarter -- or first half 2007 data that we 19 know occurred are related? 20 THE WITNESS: Let me ask to have that one 21 read back. I didn't -- 22 (WHEREUPON, the record was read 23 by the reporter as requested.) 24 MS. WELCH: Objection to form.</p>	<p style="text-align: right;">Page 255</p> <p>1 to go down starting in May of 2005? 2 A. I don't know that I've seen -- unless 3 there's something I'm not thinking about in the 4 report that would dispositively tell me 5 precisely why it went down from May to -- or 6 from June to July. 7 Q. You haven't done any forensic analysis 8 of the documents to determine whether there was 9 a cause for the decline in the pass/fail 10 percentage for those months? 11 A. Well, I've looked at the data to see 12 what the differences were and done the analyses 13 that I have to the extent there -- you know, 14 that there are documents that explain that. I 15 don't know that I have those noted, but I would 16 have to go back and look at the documents to see 17 if, in fact, documents exist to do that. I'm 18 not recalling them as I sit here today. 19 Q. So you don't have a hypothesis as to 20 why? 21 A. I don't articulate a hypothesis here 22 other than as it relates to the fact that 23 then -- how it was dealt with in terms of the 24 changes as opposed to the why.</p>
<p style="text-align: right;">Page 254</p> <p>1 THE WITNESS: I don't understand the 2 question. I'm sorry. 3 BY MR. DUTTON: 4 Q. So we know that for -- for a period of 5 time starting in May of 2006 and going through 6 May of 2007, the monthly pass/fail reports -- 7 just -- just the percentage of pass/fail for 8 the monthly -- as reflected in the monthly 9 reports goes down? 10 A. Yes, I would agree with it goes down by 11 comparison with the annual. I would agree with 12 that. 13 Q. And we know that in the summer of 2007 14 and in December of 2007, decisions were made to 15 update first the 2006 work order data and then 16 the first half of 2007 work order data, right? 17 A. Yes. 18 Q. Do you know why those updates were 19 done? 20 A. From what I can tell and what I've 21 seen, part of the reason was that there was an 22 interest in increasing the -- the pass levels 23 that would be reflected in the reports. 24 Q. Do you know what caused the pass levels</p>	<p style="text-align: right;">Page 256</p> <p>1 (WHEREUPON, DUDNEY Deposition 2 Exhibit No. 013 was marked for 3 identification.) 4 BY MR. DUTTON: 5 Q. Let me show you what's been marked as 6 Dudney Exhibit 013. Can you confirm that that's 7 a copy of your Exhibit 5 from your expert 8 report? All 13 pages are there, Mr. Dudney. 9 A. Yes. What you've handed me as Dudney 10 Deposition Exhibit 13 appears to be a complete 11 copy, although smaller again, of Dudney 12 Deposition Exhibit 001 and Exhibit 5 to that 13 Dudney Deposition Exhibit 001, so it seems to be 14 a copy of that. 15 Q. I'm not trying to diminish your 16 exhibits. 17 The -- Exhibit 013 is a comparison of 18 the paper work order to the monthly pass/fail 19 reports and to the annual pass/fail reports in 20 Yardi, correct, at Monterey? 21 A. Correct. 22 Q. And the data that's set forth in 23 Exhibit 013 is part of the data that you 24 analyzed to prepare the graph on Exhibit 31,</p>

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<p style="text-align: right;">Page 257</p> <p>1 right -- or it's related data?</p> <p>2 A. It's related data. It's a different</p> <p>3 set of data, but it's related. These are --</p> <p>4 these are really the work orders that are --</p> <p>5 these are the work orders that -- where the</p> <p>6 paper work order copy was located in the</p> <p>7 Pinnacle production and it implied a fail, and</p> <p>8 then there was subsequent data which showed that</p> <p>9 it was a pass on the annual pass/fail report and</p> <p>10 sometimes on the monthly, but not always.</p> <p>11 Q. And when you say it was implied -- it</p> <p>12 implied a fail, that's based on your analysis,</p> <p>13 right?</p> <p>14 A. It's based on my review of the paper</p> <p>15 work orders with handwritten notes on them</p> <p>16 indicating the time when the -- when the tech</p> <p>17 visited the property or responded to the</p> <p>18 property and the incident that would be</p> <p>19 reported.</p> <p>20 Q. Now, the other thing that you talk</p> <p>21 about at Monterey is the unit turn analysis,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And at Monterey -- and not at Fort</p>	<p style="text-align: right;">Page 259</p> <p>1 of the 2006 incentive fee package, right?</p> <p>2 A. I think that's right.</p> <p>3 Q. And that document was essentially a</p> <p>4 work order analysis like the pass/fail report</p> <p>5 except it was for COM work orders, right?</p> <p>6 A. Right, which is a turn.</p> <p>7 Q. And it was obvious from the face of the</p> <p>8 document the amount of time or the number of</p> <p>9 hours that was -- sorry, that the -- that the</p> <p>10 report calculated between start -- sorry,</p> <p>11 between call and start, right?</p> <p>12 A. I can say that one can figure it out by</p> <p>13 looking at it. I mean, that's what we did.</p> <p>14 Whether -- the extent of obviousness of it, I</p> <p>15 don't want to comment on, but we analyzed the</p> <p>16 document and understood --</p> <p>17 Q. 24 hours in a day, you can divide the</p> <p>18 number by 24, pretty much figure out how many</p> <p>19 days it took to complete the turn, right?</p> <p>20 A. One can do that math, yes.</p> <p>21 Q. You think Mr. Cohen could do the math?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Cohen graduated from business</p> <p>24 school?</p>
<p style="text-align: right;">Page 258</p> <p>1 Irwin, unit turns were in a -- were part of the</p> <p>2 incentive fee plan, right?</p> <p>3 A. I believe that's correct.</p> <p>4 Q. Now, I believe that you set out on</p> <p>5 Page 40 your understanding of the turn component</p> <p>6 or the unit turn component of Pinnacle's</p> <p>7 property management incentive fee, right?</p> <p>8 A. Yes.</p> <p>9 Q. And you state on Page 40, specifically</p> <p>10 Pinnacle would earn 100 percent credit for unit</p> <p>11 turns completed in five business days or less.</p> <p>12 Do you see that?</p> <p>13 A. Yeah, middle first paragraph</p> <p>14 specifically.</p> <p>15 Q. 75 percent credit for unit turns</p> <p>16 completed in six business days, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And 50 percent credit for unit turns</p> <p>19 completed in seven business days?</p> <p>20 A. Correct.</p> <p>21 Q. Now, the document that you cite as</p> <p>22 evidence of what Pinnacle reported for the 2006</p> <p>23 incentive fee year, that was a document that</p> <p>24 Mr. Somerville gave to Mr. Cohen in 2007 as part</p>	<p style="text-align: right;">Page 260</p> <p>1 A. I don't know that answer.</p> <p>2 Q. Well, I'm thinking he could probably do</p> <p>3 the math.</p> <p>4 So -- so your claim isn't that -- that</p> <p>5 Pinnacle concealed or hid its calculation method</p> <p>6 for unit turns; you're just claiming that</p> <p>7 Pinnacle used the wrong method for unit terms.</p> <p>8 Is that what you're saying?</p> <p>9 A. I certainly don't have an opinion that</p> <p>10 they concealed it.</p> <p>11 Q. Well, if they showed it to Mr. Cohen,</p> <p>12 they didn't conceal it, did they?</p> <p>13 A. No, and nor do I make a -- I don't make</p> <p>14 such a statement that they concealed it.</p> <p>15 Q. I thought the allegations in this case</p> <p>16 were about fraud and racketeering and failure to</p> <p>17 disclose key information, are they not?</p> <p>18 A. Again, I think that's probably better</p> <p>19 asked of counsel. My general understanding is</p> <p>20 that there certainly are fraud-related claims</p> <p>21 and as I understand, RICO-related claims.</p> <p>22 Q. Are there any breach of contract</p> <p>23 related claims in this litigation, Mr. Dudney?</p> <p>24 A. I don't know that I could say one way</p>

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<p style="text-align: right;">Page 261</p> <p>1 or the other because I don't know what the</p> <p>2 position is legally in terms of, for example, a</p> <p>3 failure to maybe perform -- something that would</p> <p>4 be consistent with fiduciary duty or a report</p> <p>5 issue with respect to work orders given the</p> <p>6 language in the PMA, so I -- I really couldn't</p> <p>7 answer that question as to whether or not there</p> <p>8 are some sort of breach of contract type claims.</p> <p>9 Q. Are you aware if Pinnacle ever received</p> <p>10 notice of default from Clark at Monterey that it</p> <p>11 was improperly calculating its unit turn fee?</p> <p>12 A. I'm unaware of any notice of a default.</p> <p>13 Q. Are you aware that Pinnacle was ever</p> <p>14 given an opportunity to cure the allegation that</p> <p>15 it wrongly calculated its unit turn component of</p> <p>16 its incentive fee?</p> <p>17 A. I'm not -- again, I'm not aware that</p> <p>18 there was a notice of default and so if there</p> <p>19 was -- and I'm not -- similarly I'm not aware of</p> <p>20 any notice that would be solved by a cure period</p> <p>21 or anything like that.</p> <p>22 Q. Are you -- is it your understanding</p> <p>23 that Pinnacle is alleged to have defrauded the</p> <p>24 owner by falsifying information relating to its</p>	<p style="text-align: right;">Page 263</p> <p>1 Q. Well, you agree with me that the</p> <p>2 Pinnacle incentive fee with respect to unit</p> <p>3 turns used the phrase business day, correct?</p> <p>4 A. I believe that it did, yes.</p> <p>5 Q. All right. How many hours in a</p> <p>6 business day, Mr. Dudney?</p> <p>7 A. It would depend on -- typically when</p> <p>8 people talk about business days, in my</p> <p>9 experience, they talk about the entirety of the</p> <p>10 day as opposed to, for example, a number of</p> <p>11 hours, like so let's say eight hours. I mean,</p> <p>12 there might be eight hours in a business day,</p> <p>13 but typically when it's -- my experience has</p> <p>14 been when you talk about a business day, it's,</p> <p>15 you know, Wednesday is a business day, Thursday</p> <p>16 is a business day. Sunday might not be a</p> <p>17 business day.</p> <p>18 Q. And did they include after hours?</p> <p>19 A. Well, the way that they did the</p> <p>20 calculation, they -- they included whole days</p> <p>21 and then made adjustments to -- calculated</p> <p>22 differently than what I understand and read the</p> <p>23 PMA to be.</p> <p>24 Q. Based on your reading of what a</p>
<p style="text-align: right;">Page 262</p> <p>1 calculation of unit turn fee?</p> <p>2 A. I don't know that I could testify about</p> <p>3 what all the allegations are with respect to</p> <p>4 this. I was just simply asked to look at the</p> <p>5 calculation and that's what I've done as part of</p> <p>6 what starts on Page 40 in terms of how it was</p> <p>7 calculated and how that compared to what was</p> <p>8 laid out in the PMA and it was different.</p> <p>9 Q. What were the business hours at</p> <p>10 Monterey?</p> <p>11 A. I'd have to look. Generally speaking</p> <p>12 if I recall, they were what one -- what people</p> <p>13 would consider to be normal business hours. I</p> <p>14 don't know if they were exactly 8:00 to 5:30 or</p> <p>15 something similar to that, but I'd have to --</p> <p>16 I'd have to look at additional data to tell you.</p> <p>17 Q. And would Saturday be a business day?</p> <p>18 A. I don't know that I comment on whether</p> <p>19 Saturday is included as a business day.</p> <p>20 Q. Would Sunday be a business day?</p> <p>21 A. Excuse me for one second.</p> <p>22 Q. How many hours are in a business day?</p> <p>23 A. It depends on how one defines a</p> <p>24 business day.</p>	<p style="text-align: right;">Page 264</p> <p>1 business day is. Does it describe in the PMA</p> <p>2 how to measure a business day, Mr. Dudney?</p> <p>3 A. No, it does not, but I would say that</p> <p>4 the -- there's consistency between the way</p> <p>5 I interpret it and the way it was calculated</p> <p>6 except for the addition of extra days. I don't</p> <p>7 think the difference emanates from a calculation</p> <p>8 of the number of hours less than 24 in a</p> <p>9 business day, just mathematically the way that</p> <p>10 that calculation was submitted.</p> <p>11 Q. Would it include hours on Saturday and</p> <p>12 Sunday?</p> <p>13 A. I think there's a version that includes</p> <p>14 Saturday and then there's a version that</p> <p>15 excludes Saturday and Sunday, if I remember</p> <p>16 correctly. So I think it was looked at both</p> <p>17 ways.</p> <p>18 Q. Well, in any event the facts are that</p> <p>19 Pinnacle -- Pinnacle's report in support of its</p> <p>20 incentive fee for unit turns disclosed the</p> <p>21 calculations it was using to Mr. Cohen, right?</p> <p>22 MS. WELCH: Asked and answered.</p> <p>23 THE WITNESS: It's -- to my understanding the</p> <p>24 calculation that I looked at I understood was</p>

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<p style="text-align: right;">Page 265</p> <p>1 shared with -- with the owner's representative, 2 and so if, in fact, Mr. Cohen saw that 3 particular document that I have in my mind's 4 eye, then that calculation is included on there 5 and I analyzed that based on that. 6 BY MR. DUTTON: 7 Q. Did you talk to Mr. Cohen about what 8 his understanding of a business day was? 9 A. I've talked to Mr. Cohen, but I didn't 10 have a conversation with him about that issue if 11 I remember correctly. 12 Q. When he approved Pinnacle's incentive 13 fee with respect to unit turns every year, did 14 you ask him about his interpretation of the 15 words business day, Mr. Dudney? 16 A. I have not asked him, if I recall 17 correctly, what his interpretation of a business 18 day was. 19 Q. Who asked you to put this section about 20 unit turns in your report, Mr. Dudney? Was it 21 the Clark legal team? 22 A. Counsel for Clark asked me to take a 23 look at that. 24 Q. Now, there is a section in your report,</p>	<p style="text-align: right;">Page 267</p> <p>1 Exhibit 014 for the deposition. 2 (WHEREUPON, DUDNEY Deposition 3 Exhibit No. 014 was marked for 4 identification.) 5 BY MR. DUTTON: 6 Q. Here you are, Mr. Dudney. 7 A. Thank you. 8 Q. I hope I didn't make that one too 9 small. 10 A. It started out small, so I may refer 11 to -- let me just check and make sure it's the 12 same thing. 13 Yes. Again, it's a smaller version of 14 it, but it looks like it's the same thing in my 15 report so -- 16 Q. Okay. And now help me with 17 Exhibit 014. This is an analysis of the 18 landscaping contract? 19 A. Yes. 20 Q. And the first row is a row entitled 21 Contract Landscaping Per GL. Can you tell me 22 what that represents? 23 A. It represents, as I articulate in the 24 report, you can see that I pulled -- if you look</p>
<p style="text-align: right;">Page 266</p> <p>1 Mr. Dudney, where you do an analysis of 2 Mainscape, right? 3 A. Yes. 4 Q. And you look at the contracts between 5 Pinnacle and Mainscape, right? 6 THE WITNESS: I'm sorry. Could you read that 7 last part of the question back? 8 (WHEREUPON, the record was read 9 by the reporter as requested.) 10 THE WITNESS: Yes. 11 BY MR. DUTTON: 12 Q. And with respect to the services that 13 were contracted for, you do kind of a before and 14 after analysis of the cost of those services and 15 you conclude for each service that after 16 Mainscape was no longer the vendor, the cost of 17 those services declined? 18 A. Yes, generally. 19 Q. And in each of those analyses, you make 20 an adjustment for inflation from before to 21 after, right? 22 A. Yes. 23 Q. So let's take a look at Exhibit 9 of 24 your report which I'm going to mark as</p>	<p style="text-align: right;">Page 268</p> <p>1 on Page 56, I pulled a particular general ledger 2 code which was 7060-00 contract yards and 3 ground, and then I reviewed records with respect 4 to those charges. So there were a number of 5 charges that were included over time in those 6 various years for that line item and -- but 7 that's where the source data comes from, the 8 general ledger itself. 9 Q. And then you make a series of 10 adjustments, right? 11 A. Correct. 12 Q. You have an adjustment for installation 13 slash removal? 14 A. Yes. 15 Q. You have an adjustment for irrigation 16 parts? 17 A. Correct. 18 Q. You have an adjustment for premove-in 19 maintenance? 20 A. Yes. 21 Q. You have an adjustment for storm? 22 A. Correct. 23 Q. And you have an adjustment for 24 miscellaneous?</p>

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<p style="text-align: right;">Page 269</p> <p>1 A. Yes.</p> <p>2 Q. What are those adjustments for?</p> <p>3 A. Those adjustments are -- you can see in</p> <p>4 Footnote 1, they were made for what I would call</p> <p>5 out-of-scope services or one-time</p> <p>6 non-reoccurring charges based on what I -- the</p> <p>7 descriptions I saw in the general ledger, so</p> <p>8 what I was doing was removing costs that might</p> <p>9 skew a comparison of one year to the next</p> <p>10 because of a particular expense.</p> <p>11 So, for example, in 2008, you know,</p> <p>12 there was a significant -- well, in 2006 through</p> <p>13 2008 and actually all the way up to 2013, there</p> <p>14 were a fair number, although at very different</p> <p>15 levels, irrigation parts that were being</p> <p>16 purchased and so I removed those to try and</p> <p>17 isolate then the more traditional and typical</p> <p>18 landscaping services that were being provided as</p> <p>19 opposed to irrigation system parts.</p> <p>20 Q. Okay. And after that there is a row</p> <p>21 called analyzed costs. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And so those are the costs per year</p> <p>24 after your adjustments, right?</p>	<p style="text-align: right;">Page 271</p> <p>1 average on the CPI adjusted dollars of -- all in</p> <p>2 2004 dollars for the Mainscape period as</p> <p>3 compared to the post-Mainscape period and then</p> <p>4 calculated the differential that I did.</p> <p>5 Q. So you think that landscape charges are</p> <p>6 correlated with the number of units?</p> <p>7 A. Yes.</p> <p>8 Q. What's the basis for that assumption?</p> <p>9 A. Looking at the contracts and the way</p> <p>10 that the charges are -- are rendered, the</p> <p>11 contracts provide costs in various figures based</p> <p>12 on that consideration of those metrics in terms</p> <p>13 of how many units there are, and it's also</p> <p>14 consistent with discussions that I've had with</p> <p>15 individuals from the owner with respect to their</p> <p>16 understanding of the provision of those types of</p> <p>17 services that they're -- that they're -- they're</p> <p>18 driven by or correlated by the number of</p> <p>19 available units because landscaping is provided</p> <p>20 to not just occupied units, but also available</p> <p>21 units.</p> <p>22 Q. What are -- what are Pinnacle's</p> <p>23 contractual obligations in entering into</p> <p>24 contracts such as the landscaping contract?</p>
<p style="text-align: right;">Page 270</p> <p>1 A. Correct.</p> <p>2 Q. And then you have a component called</p> <p>3 average CPI adjustment, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And average CPI adjustment -- well,</p> <p>6 what does that do?</p> <p>7 A. It makes -- it creates a number which</p> <p>8 would be considered the real dollar as compared</p> <p>9 to a nominal dollar, and so what it does is it</p> <p>10 basically puts things into 2004 dollars I</p> <p>11 believe so that you can then compare one year to</p> <p>12 the next.</p> <p>13 Q. So it puts everything in 2004 dollars?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And then you do a weighted</p> <p>16 average CPI adjustment actual cost on a per unit</p> <p>17 basis, right?</p> <p>18 A. Yes.</p> <p>19 Q. And that's how you do your comparison?</p> <p>20 A. Yes, I look at available units for each</p> <p>21 of the periods where the costs were incurred</p> <p>22 because that's the way that landscaping charges</p> <p>23 are incurred on an available unit basis and so</p> <p>24 then I compared averages for the -- the weighted</p>	<p style="text-align: right;">Page 272</p> <p>1 A. I'm not sure I understand your question</p> <p>2 when you say their contractual obligations. In</p> <p>3 what respect?</p> <p>4 Q. Well, Pinnacle -- we talked earlier</p> <p>5 that Pinnacle has an obligation -- or the owner</p> <p>6 has the right to insist upon Pinnacle getting</p> <p>7 three bids for a contract like the landscaping</p> <p>8 contract, right?</p> <p>9 A. I understand that the owner can -- can</p> <p>10 request -- what I understand is for contracts</p> <p>11 above 25,000 that Pinnacle is supposed to get</p> <p>12 three written bids, but the owner can also, you</p> <p>13 know, do other -- take other steps as</p> <p>14 I understand it to evaluate costs and --</p> <p>15 Q. The owner has the right to approve or</p> <p>16 disapprove of expenditures over \$25,000, right?</p> <p>17 A. I believe that's correct.</p> <p>18 Q. The owner could have said, no way,</p> <p>19 that's too much money, we're not paying it,</p> <p>20 correct?</p> <p>21 A. I -- again, without interpreting the</p> <p>22 contract, but just as a nonlegal layperson, my</p> <p>23 understanding is that they had the ability to do</p> <p>24 that if they so chose.</p>

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<p style="text-align: right;">Page 273</p> <p>1 Q. But Pinnacle was to supposed to</p> <p>2 exercise its best judgment in getting the best</p> <p>3 deal possible for the project, right?</p> <p>4 A. Again, without taking your</p> <p>5 characterization and your question as being me</p> <p>6 rendering a legal opinion on it, my</p> <p>7 understanding is that there was -- you know,</p> <p>8 that Pinnacle had certain responsibilities with</p> <p>9 respect to providing the services that were</p> <p>10 required by the manager.</p> <p>11 Q. And those services had to be within a</p> <p>12 range of reason, right, the cost of those</p> <p>13 services?</p> <p>14 A. I don't know what the contract says</p> <p>15 with respect to the reasonability of the charges</p> <p>16 but is -- but -- so I really can't comment one</p> <p>17 way or the other on that.</p> <p>18 Q. Are you ever -- are you aware that</p> <p>19 Pinnacle ever received a notice of default with</p> <p>20 respect to its contracting with Mainscape over</p> <p>21 landscaping?</p> <p>22 A. I'm not aware of a notice of default</p> <p>23 with respect to Mainscape's landscaping.</p> <p>24 Q. Were you aware whether Pinnacle was</p>	<p style="text-align: right;">Page 275</p> <p>1 BY MR. DUTTON:</p> <p>2 Q. Mr. Dudney, I'm going to show you what</p> <p>3 has been marked as Exhibit 015. Exhibit 015 is</p> <p>4 another part of your Mainscape analysis and this</p> <p>5 is the analysis of the trash removal contract,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And this analysis is pretty much the</p> <p>9 same format as the analysis we just looked at</p> <p>10 for the landscaping contract, right?</p> <p>11 A. Yes.</p> <p>12 Q. You take the total amount of the trash</p> <p>13 removal costs from the GL for each year, right?</p> <p>14 A. Yes.</p> <p>15 Q. You make adjustments for out-of-scope</p> <p>16 services, one-time charges and general ledger</p> <p>17 reclassifications, right?</p> <p>18 A. Yes.</p> <p>19 Q. And then you make your CPI adjustments</p> <p>20 and you take a weighted average by adjusting the</p> <p>21 number of occupied units every year and you come</p> <p>22 up with the weighted average CPI adjusted actual</p> <p>23 cost per unit from '04 to '08 and the weighted</p> <p>24 average CPI adjustment and actual cost per unit</p>
<p style="text-align: right;">Page 274</p> <p>1 ever given an opportunity to cure any alleged</p> <p>2 overcharges with respect to its contract with</p> <p>3 Mainscape?</p> <p>4 A. Similarly I'm not aware of whether</p> <p>5 there was any notice that was provided which</p> <p>6 would then result in an ability to employ some</p> <p>7 cure.</p> <p>8 I think we're a little bit over an</p> <p>9 hour. Whenever you get a minute, I'll just take</p> <p>10 a quick break.</p> <p>11 MR. DUTTON: All right. Well, why don't you</p> <p>12 take a break.</p> <p>13 THE WITNESS: Okay. Just to stretch my legs</p> <p>14 here.</p> <p>15 THE VIDEOGRAPHER: We are off the record at</p> <p>16 4:03 p.m.</p> <p>17 (WHEREUPON, a short break was</p> <p>18 taken.)</p> <p>19 (WHEREUPON, DUDNEY Deposition</p> <p>20 Exhibit No. 015 was marked for</p> <p>21 identification.)</p> <p>22 THE VIDEOGRAPHER: Here begins DVD No. 6. We</p> <p>23 are on the record at 4:13 p.m.</p> <p>24</p>	<p style="text-align: right;">Page 276</p> <p>1 from 2009 to 2014 and you get a difference?</p> <p>2 A. Correct.</p> <p>3 Q. And would you agree with me just</p> <p>4 looking at it that the net dollars on the top</p> <p>5 line and even the dollars after the adjustment</p> <p>6 are pretty much the same every year?</p> <p>7 A. I -- when you say the net dollars and</p> <p>8 then the dollars after the adjustment, what are</p> <p>9 you referring to?</p> <p>10 Q. Just the total amount of dollars</p> <p>11 unadjusted.</p> <p>12 A. Ah, so the very top line.</p> <p>13 Q. Yeah.</p> <p>14 A. You're saying that on -- before I make</p> <p>15 the adjustments, that on average, they're</p> <p>16 roughly the same; is that what you are --</p> <p>17 Q. Yeah. In fact, if anything, they're</p> <p>18 higher in the latter period than they are in the</p> <p>19 earlier period.</p> <p>20 A. Yeah, I mean, I would -- they are</p> <p>21 higher in the latter period. There's also</p> <p>22 greater adjustments that I do to the latter</p> <p>23 periods just because of the nature of the</p> <p>24 various categories that I pull out. So I would</p>

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<p style="text-align: right;">Page 277</p> <p>1 suggest that the first place to start is -- if</p> <p>2 you're going to do a comparison, is look at</p> <p>3 analyzed costs and then again you have to</p> <p>4 consider the -- the timing of the cost as well</p> <p>5 as the number of average occupied units since</p> <p>6 that's what is influencing trash.</p> <p>7 Q. Right. And -- and would you agree with</p> <p>8 me that the differential that you -- the</p> <p>9 percentage difference that you calculate is</p> <p>10 after you adjust -- comes primarily from the</p> <p>11 adjustments you make for CPI and for average</p> <p>12 occupied units?</p> <p>13 A. I mean, those are parts of the</p> <p>14 calculation. I didn't -- I didn't attempt to</p> <p>15 run calculations that didn't include a CPI</p> <p>16 adjustment and/or an average occupied unit</p> <p>17 adjustment so --</p> <p>18 Q. Did you do any kind of sensitivity</p> <p>19 analysis to see what the results would be</p> <p>20 without your various adjustments for the average</p> <p>21 number of occupied units or the CPI?</p> <p>22 A. No.</p> <p>23 Q. And this analysis, like the landscaping</p> <p>24 analysis, assumes that trash removal costs were</p>	<p style="text-align: right;">Page 279</p> <p>1 Q. And this one is slightly different from</p> <p>2 the other one, so why don't you explain to me</p> <p>3 how this one's different.</p> <p>4 A. It's just different in that this is</p> <p>5 driven by the number of turns and so we had to</p> <p>6 look at the number of turns that were provided</p> <p>7 by unit type or size, so bedrooms and -- and you</p> <p>8 can see that there's -- I divide the costs by</p> <p>9 these various categories for the time periods</p> <p>10 that I've analyzed and then calculated the</p> <p>11 weighted average price difference based on that.</p> <p>12 And so I took actual data from the general</p> <p>13 ledger account 6910 and determined the number of</p> <p>14 turns as well as the average costs that were</p> <p>15 being incurred on a pre-CPI basis and then I</p> <p>16 adjusted those in the work papers that underlie</p> <p>17 this exhibit in the same conceptual fashion as</p> <p>18 what I've done with the other ones. So it's the</p> <p>19 same CPI index and the same general concept</p> <p>20 that's being applied here and then it's being</p> <p>21 applied to the number of actual turns that</p> <p>22 occurred by size.</p> <p>23 Q. What is the line percentage of turns</p> <p>24 observed -- or the row, what does that mean?</p>
<p style="text-align: right;">Page 278</p> <p>1 correlated with the number of units?</p> <p>2 A. It's -- it's that the -- one needs to</p> <p>3 consider the -- the number of units because of</p> <p>4 the nature of the costs and the nature of the</p> <p>5 contract, so yes, there is a -- there can be a</p> <p>6 correlation, but there are also situations where</p> <p>7 as I point out in my rebuttal report, you have</p> <p>8 situations where the same number of units are</p> <p>9 available, but there was a negotiation to bring</p> <p>10 the cost down. So it's -- you have to consider</p> <p>11 the number of units when you're looking at cost,</p> <p>12 but you also have to consider the nature of the</p> <p>13 costs themselves and that's what I think I've</p> <p>14 done here.</p> <p>15 (WHEREUPON, DUDNEY Deposition</p> <p>16 Exhibit No. 016 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. DUTTON:</p> <p>19 Q. Let me show you what's been marked as</p> <p>20 Exhibit 016.</p> <p>21 A. Okay.</p> <p>22 Q. Exhibit 016 is your analysis of</p> <p>23 Mainscape's contract cleaning?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 280</p> <p>1 A. It's the percentage of turns that occur</p> <p>2 in those various unit types or the size of the</p> <p>3 bedrooms, if you will, and so that's what</p> <p>4 allowed us to calculate a weighted average price</p> <p>5 difference by taking the number of turns that</p> <p>6 occurred at each different level or size.</p> <p>7 Q. Why do you use the CPI index for L.A.,</p> <p>8 Riverside and Orange County?</p> <p>9 A. Because that's the CPI index that's</p> <p>10 included within the PMA with respect to CMC.</p> <p>11 Q. Was there a CPI adjustment in any of</p> <p>12 the Mainscape contracts themselves?</p> <p>13 A. I don't think in turns, but I think,</p> <p>14 yes, with respect to -- I think it has CPI --</p> <p>15 CPI or CPI-like escalators in the five-year</p> <p>16 contract for trash and for -- for landscaping.</p> <p>17 Q. Why did you use the CPI index that was</p> <p>18 in the PMA?</p> <p>19 A. Because it was -- that was one</p> <p>20 consideration as to why I used the one I did.</p> <p>21 It was because that was included by the parties</p> <p>22 when they were negotiating with respect to</p> <p>23 looking at values of certain aspects of the</p> <p>24 contract over time, so that was something that</p>

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<p style="text-align: right;">Page 281</p> <p>1 was negotiated previously between the parties --</p> <p>2 Q. Between the owner and -- between Clark</p> <p>3 and Pinnacle is what you're saying?</p> <p>4 A. Correct, that's my understanding of it.</p> <p>5 Q. Fort Irwin is in San Bernardino County,</p> <p>6 isn't it?</p> <p>7 A. I don't know that I can tell you the --</p> <p>8 I mean, it's 30 minutes outside of Barstow, that</p> <p>9 may be --</p> <p>10 Q. You don't know what county --</p> <p>11 A. I don't know the -- I don't know off</p> <p>12 the top of my head the county that it resides.</p> <p>13 Q. Is there a difference between the CPI</p> <p>14 for L.A., Riverside and Orange County as opposed</p> <p>15 to San Bernardino County?</p> <p>16 A. I don't know that -- I'd have to look</p> <p>17 to see if there -- if there's a difference there</p> <p>18 to --</p> <p>19 Q. Mainscape's competition come from San</p> <p>20 Bernardino County, wouldn't it?</p> <p>21 A. I -- I can't testify where it would all</p> <p>22 come from. I mean, they were an Ohio-based or</p> <p>23 Indiana-based company originally before they got</p> <p>24 out there so...</p>	<p style="text-align: right;">Page 283</p> <p>1 were made by Mr. Calloway in the case of</p> <p>2 Exhibit 13 in certain portions that are labeled</p> <p>3 cash deposits by Ron Calloway, that total 76,377</p> <p>4 as shown on Page 3 of 4, and that covers the</p> <p>5 time period, excuse me, from roughly November of</p> <p>6 2006 through December 2012. And then on Page 4</p> <p>7 of 4, it's a series of cash deposits made by</p> <p>8 Mr. Wimer beginning in December of 2003 and</p> <p>9 continuing through February of 2012 totalling of</p> <p>10 just over 86,500.</p> <p>11 Q. And with respect to the -- the table or</p> <p>12 the schedule of cash deposits made by Ron</p> <p>13 Calloway that's not accurate, is it? Ron</p> <p>14 Calloway did not make any deposits -- cash</p> <p>15 deposits into these banks, did he?</p> <p>16 A. As opposed to who? I'm not sure I'm</p> <p>17 following your question.</p> <p>18 Q. As opposed to his wife who did the</p> <p>19 banking?</p> <p>20 A. Oh.</p> <p>21 Q. You didn't read the depositions?</p> <p>22 A. It's -- I've reviewed the depositions.</p> <p>23 The -- I've associated them -- as I've</p> <p>24 understood it, it was a production related to</p>
<p style="text-align: right;">Page 282</p> <p>1 Q. Did you use the same Orange County,</p> <p>2 L.A., and Riverside County CPI in all of your</p> <p>3 calculations?</p> <p>4 A. With respect to this analysis, yes,</p> <p>5 it's the same CPI adjustment.</p> <p>6 (WHEREUPON, DUDNEY Deposition</p> <p>7 Exhibit No. 018 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. DUTTON:</p> <p>10 Q. Now, finally, let me show you what I've</p> <p>11 marked as Exhibit 018, and I'm skipping one.</p> <p>12 I'm going out of order, so Exhibit 018 is a</p> <p>13 ledger or a schedule of cash deposits made by</p> <p>14 Ron Calloway and cash deposits made by Rick</p> <p>15 Wimer. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Were you asked to include these cash</p> <p>18 deposits in your report, Mr. Dudney?</p> <p>19 A. Yes.</p> <p>20 Q. By the Clark legal team?</p> <p>21 A. Yes.</p> <p>22 Q. And what's your understanding what</p> <p>23 these ledgers show?</p> <p>24 A. Cash deposits on particular dates that</p>	<p style="text-align: right;">Page 284</p> <p>1 Mr. Calloway and accounts that he was associated</p> <p>2 with and so that's the reason that I've entitled</p> <p>3 that. Having said that, the title isn't meant</p> <p>4 to denote anything other than that association</p> <p>5 or affiliation that I've mentioned.</p> <p>6 Q. Well, Ron Calloway did not make the</p> <p>7 cash deposits?</p> <p>8 A. I'm not testifying one way or the other</p> <p>9 other than to say that these bank statements</p> <p>10 that are shown for these Bates numbers reference</p> <p>11 cash deposits from which I understand</p> <p>12 Mr. Calloway is a signatory to these accounts.</p> <p>13 Q. And you've read the testimony how the</p> <p>14 source of the money that was deposited in</p> <p>15 Mr. and Mrs. Calloway's account?</p> <p>16 A. I have, although I don't recall -- I</p> <p>17 recall Mr. Wimer more because he -- and I think</p> <p>18 he mentioned that he had some gambling winnings,</p> <p>19 so that one just sort of stuck in my head. I</p> <p>20 don't recall what Mr. Calloway's testimony was</p> <p>21 with respect to his articulated source of the</p> <p>22 money.</p> <p>23 Q. Why are these schedules included in</p> <p>24 your report?</p>

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<p style="text-align: right;">Page 285</p> <p>1 A. Because I was asked to include them.</p> <p>2 Q. Any other reason?</p> <p>3 A. No, it was part of the scope of the</p> <p>4 work that I was asked to do was to include and</p> <p>5 compile this information as shown on Exhibit 013</p> <p>6 and so my team and I did that.</p> <p>7 Q. Does the schedule of deposits made</p> <p>8 to Mr. -- into Mr. Calloway's bank account</p> <p>9 either by Mr. Calloway or by his wife, does that</p> <p>10 relate to any of the other analyses that you've</p> <p>11 done?</p> <p>12 A. Well, let's start with Mr. Wimer.</p> <p>13 Q. I asked you about Mr. Calloway,</p> <p>14 Mr. Dudney. I'd appreciate an answer.</p> <p>15 A. No. Sure. I'd be happy to. With</p> <p>16 respect to Mr. Calloway, I understand I -- that</p> <p>17 at least there have been inquiries by counsel</p> <p>18 around Mr. Calloway's relationship with vendors</p> <p>19 and so that's the context that I understood that</p> <p>20 as part of that, his bank accounts were</p> <p>21 subpoenaed.</p> <p>22 With respect to my opinions, I don't</p> <p>23 have an opinion that is specific to vendor</p> <p>24 activity at Monterey. My opinions with respect</p>	<p style="text-align: right;">Page 287</p> <p>1 involve Monterey work orders. In order for me</p> <p>2 to identify the work orders that I did, I had to</p> <p>3 review a population of work orders that included</p> <p>4 work orders that interfaced with vendor and so</p> <p>5 that was part of the process I went -- I went</p> <p>6 through to result in the analyses I have.</p> <p>7 Q. All right. So let's go back then</p> <p>8 because I think the work orders that you looked</p> <p>9 at and the analyses that you did, work orders</p> <p>10 for Monterey, you reviewed the paper work</p> <p>11 records you found for Monterey, right, for</p> <p>12 handwritten times?</p> <p>13 A. I ultimately worked my way down to ones</p> <p>14 that had handwritten time, but, for example,</p> <p>15 there were ones that had handwritten time that</p> <p>16 also referenced third-party vendors and</p> <p>17 I excluded those in order to get down to the set</p> <p>18 that I utilized. So my point was simply that</p> <p>19 the work that I and my team had to do -- we had</p> <p>20 to understand which work orders appeared to have</p> <p>21 vendor involvement and which ones didn't in</p> <p>22 order to get down to the set of work orders that</p> <p>23 we ultimately analyzed.</p> <p>24 Q. Did any of the analyses of work orders</p>
<p style="text-align: right;">Page 286</p> <p>1 to Monterey all -- are all circulating around</p> <p>2 the work order or largely circulate around the</p> <p>3 work order related issues, so in that way this</p> <p>4 one is a bit different.</p> <p>5 Q. Let me ask my question again then.</p> <p>6 Does the schedule of deposits into</p> <p>7 Mr. Calloway's bank account relate to any of the</p> <p>8 other analyses that you have done in your expert</p> <p>9 report?</p> <p>10 A. Only to the extent that work orders</p> <p>11 include work done by vendors at times and so</p> <p>12 this is -- there's a relationship in that I've</p> <p>13 interviewed Mr. Calloway, he had senior</p> <p>14 management responsibility within the technician</p> <p>15 group there and so in that way they relate, but</p> <p>16 again, I was simply asked to compile the cash</p> <p>17 deposits which is what I did.</p> <p>18 Q. So what analyses have you done of work</p> <p>19 orders performed by vendors at Monterey? Which</p> <p>20 analyses is that in your report, Mr. Dudney?</p> <p>21 A. I looked through tens of thousands of</p> <p>22 work orders.</p> <p>23 Q. In your report, which analyses is that?</p> <p>24 A. Any of them, Mr. Dutton, that -- that</p>	<p style="text-align: right;">Page 288</p> <p>1 that appear in your report have anything to do</p> <p>2 with vendor performed work orders at Monterey?</p> <p>3 A. The ultimate set that I include don't</p> <p>4 because I worked as part of my process to</p> <p>5 exclude those.</p> <p>6 Q. And your ultimate set is the set of</p> <p>7 analyses that you claim corroborate or support</p> <p>8 the assertions about work order falsification,</p> <p>9 right?</p> <p>10 A. There's -- I think they're consistent</p> <p>11 with the allegations.</p> <p>12 Q. And none of that relates to</p> <p>13 Mr. Calloway's -- deposits into Mr. Calloway's</p> <p>14 bank account, does it, work order response</p> <p>15 times, Mr. Dudney?</p> <p>16 A. Not separate from what I've described</p> <p>17 earlier. There's not an additional connection</p> <p>18 there other than through the vendor work orders</p> <p>19 that we called out to get to the set.</p> <p>20 Q. How do Mr. Wimer's gambling winnings</p> <p>21 relate to your analyses, Mr. --</p> <p>22 MS. WELCH: Objection to form.</p> <p>23 THE WITNESS: Well, I don't know that I can</p> <p>24 testify that all of these relate to gambling</p>

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<p style="text-align: right;">Page 289</p> <p>1 winnings. I just understand that Mr. Wimer 2 testified that that was at least one source of 3 his reason for the cash deposits. So having 4 said that, I know that there are allegations or 5 issues surrounding both from my own interview of 6 Mr. Wimer as well some of the allegations made 7 by declarants, that Mr. Wimer had an -- a -- at 8 points in time a non-arm's length what I'll call 9 related -- relationship to Mainscape in that he 10 had a longstanding relationship with them, had 11 worked for them at some point in time, they had 12 helped him out when he was having some 13 difficulties at some years earlier and there 14 were questions raised about the nature of that 15 relationship and so -- 16 BY MR. DUTTON: 17 Q. Raised by who? 18 A. Certain of the -- there is -- 19 Q. The Clark legal team? 20 A. Well, certainly counsel for Clark 21 raised questions. I raised questions based on 22 my interview of Mr. Wimer because he -- after 23 some back and forth, I learned about his 24 relationship with Mainscape, but it took awhile.</p>	<p style="text-align: right;">Page 291</p> <p>1 Mainscape? 2 A. If they were produced, I would have. 3 I'd have to look at my list to see if I've got 4 an actual production from Mainscape or not. 5 Q. Did Clark legal team provide you with 6 the documents that were produced by Mainscape? 7 A. I'm not -- I don't differentiate that 8 often between which production things come out 9 of because I'm just looking at the documents 10 themselves, unless I have a reason to make that 11 distinction, so I don't -- I don't recall making 12 a distinction with respect to Mainscape and 13 whether something came from them or came from 14 Pinnacle or came from Clark. So I'd have to 15 look back at my records to see if I have the 16 Mainscape production. 17 Q. Mainscape is the only vendor that you 18 single out in your report, right? 19 A. Yes. 20 Q. And Mr. Wimer is the only employee of 21 Pinnacle at Fort Irwin that you have a schedule 22 of cash deposits for, right? 23 A. That's correct. 24 Q. And Mr. Wimer as you said was the</p>
<p style="text-align: right;">Page 290</p> <p>1 And then also there were issues that were raised 2 by one or more, at least -- at least one, I 3 think it was Ms. Foster maybe -- or Jodi George 4 I think, I'm sorry, who raised a question about 5 his relationship with Mainscape. 6 And then also I think there are 7 admissions in the record around the fact that 8 Mainscape was one of the vendors that 9 contributed money to what they called the 10 extravaganza and that occurred one or more 11 years, and that as a result of that, Mr. Wimer 12 seemed to be the central player from the 13 project's perspective interacting with Mainscape 14 on this and that part of what he did was receive 15 funds and then distribute excess funds at least 16 at -- at least one time in the form of gift 17 cards to employees. So that's just at a high 18 level generally what I understand around 19 Mr. Wimer and his interaction with Mainscape. 20 Q. Subpoenas went out to Mainscape, did 21 they not? 22 A. I couldn't tell you if they did or 23 didn't. 24 Q. Did you ever review documents from</p>	<p style="text-align: right;">Page 292</p> <p>1 person at Pinnacle who collected money -- 2 solicited and collected money from vendors, 3 including Mainscape, to fund the extravaganza 4 and if any money was left over, to purchase gift 5 cards for Pinnacle employees, right? 6 A. I think that's generally correct. 7 Q. And your testimony is that you don't 8 recall one way or the other ever having received 9 and reviewed Mainscape documents, Mr. Dudney? 10 A. No, that's not what I said. You asked 11 about the Mainscape production. I've certainly 12 reviewed Mainscape documents. What I can't 13 distinguish between sitting here is whether 14 those came from a Mainscape production or it 15 came through some other production without me 16 looking at the Bates numbers. 17 Q. Find any evidence in the Mainscape 18 production, Mr. Dudney, of any improper payments 19 to Mr. Wimer from Mainscape? 20 A. Did you ask me did I? 21 Q. Yeah. 22 A. I didn't -- again, I didn't segregate 23 out the Mainscape production, so I haven't done 24 that analysis and I don't recall that I've</p>

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<p style="text-align: right;">Page 293</p> <p>1 identified any documents regardless of the</p> <p>2 production that would evidence that beyond the</p> <p>3 allegations that I've mentioned and the results</p> <p>4 of the interview that I had with them.</p> <p>5 Q. So in your summary of opinions, I think</p> <p>6 we've been through everything that relates to</p> <p>7 Summary A.</p> <p>8 A. Yes.</p> <p>9 Q. Okay?</p> <p>10 A. I think that's right.</p> <p>11 Q. Summary B basically takes the work that</p> <p>12 you did for the Georgia case for Fort Benning</p> <p>13 and Fort Belvoir and assumes that Pinnacle is</p> <p>14 terminated at the Monterey and the CMC projects</p> <p>15 and that the projects would enjoy the same rate</p> <p>16 of savings that you calculated at Belvoir and</p> <p>17 Benning projects, right?</p> <p>18 A. No, that's not I don't think an</p> <p>19 accurate articulation of what Opinion B is.</p> <p>20 Q. Well, you say assuming in light of</p> <p>21 these similarities that Pinnacle is terminated</p> <p>22 at the Monterey and CMC projects and that the</p> <p>23 projects enjoy the same 10.7 percent savings</p> <p>24 experienced at the Benning and Belvoir projects</p>	<p style="text-align: right;">Page 295</p> <p>1 context of the -- what that kind of a savings</p> <p>2 rate would have meant to Monterey and CMC</p> <p>3 compared to what they paid, that number would be</p> <p>4 \$21 million, because Pinnacle hasn't been</p> <p>5 removed at Benning and Belvoir where they have</p> <p>6 at -- I'm sorry, they haven't been removed at</p> <p>7 CMC and Monterey, whereas they have at Benning</p> <p>8 and Belvoir.</p> <p>9 Q. So the period of time that you have</p> <p>10 calculated this incentive fee -- or sorry, this</p> <p>11 savings of -- I think it's a total of \$20</p> <p>12 million is what you calculate for both projects</p> <p>13 combined, 21 million?</p> <p>14 A. It's \$21 million on a combined basis if</p> <p>15 you do a comparison of the rate of savings that</p> <p>16 has been enjoyed at Benning and Belvoir and you</p> <p>17 apply that rate to the historical costs that</p> <p>18 have been incurred by --</p> <p>19 Q. So you get that number by --</p> <p>20 A. By CMC and --</p> <p>21 Q. -- looking at the historical cost from</p> <p>22 the start of each project, right?</p> <p>23 A. Which -- are you talking about how I --</p> <p>24 how I mathematically derived the 21 million?</p>
<p style="text-align: right;">Page 294</p> <p>1 after Pinnacle's termination, such reduced costs</p> <p>2 would amount to 21 million over the life of</p> <p>3 Monterey and CMC projects to date, right?</p> <p>4 A. Yes, I didn't try and follow every</p> <p>5 single word, but, yes, the distinction that I'm</p> <p>6 making with your previous question to what is</p> <p>7 written here is that -- is that the -- what I'm</p> <p>8 doing is is that if Pinnacle is terminated and</p> <p>9 if they enjoy the same savings rate that has</p> <p>10 been experienced on average at Benning and</p> <p>11 Belvoir, then the -- that amount would result in</p> <p>12 \$21 million. That --</p> <p>13 Q. Over the remaining life of the Monterey</p> <p>14 and CMC projects?</p> <p>15 A. No, that is the -- that is a savings</p> <p>16 rate -- as you see it says such reduced cost</p> <p>17 would amount to approximately \$21 million over</p> <p>18 the life of the projects to date, meaning that</p> <p>19 Pinnacle is still there, that in -- Benning and</p> <p>20 Belvoir have experienced a savings rate on a</p> <p>21 weighted average basis of 10.7 percent, and</p> <p>22 if -- if one were to evaluate or consider that</p> <p>23 experience that has been enjoyed at Benning and</p> <p>24 Belvoir and wanted to understand the financial</p>	<p style="text-align: right;">Page 296</p> <p>1 Q. Yes.</p> <p>2 A. I look at that by applying the</p> <p>3 10.7 percent to the same equivalent set of costs</p> <p>4 by category that I looked at at Benning and</p> <p>5 Belvoir, those same sets of controllable costs,</p> <p>6 and if one applies that 10.7 percent to those</p> <p>7 same cost categories at CMC and Monterey, that</p> <p>8 math would result in a -- in a \$21 million</p> <p>9 figure.</p> <p>10 Q. And those costs are from the period</p> <p>11 March 1, 2004, through the end of 2014?</p> <p>12 A. It's through the end of when</p> <p>13 I calculated it, yes, I think it's through the</p> <p>14 end of 2014.</p> <p>15 Q. You say to the end of 2014 on Page 63.</p> <p>16 A. Yes.</p> <p>17 Q. I'm assuming that's what it is.</p> <p>18 A. Yes.</p> <p>19 Q. All right. So at -- at CMC this</p> <p>20 \$10,568,000 is a ten percent savings that starts</p> <p>21 on March 1, 2004, and goes all the way through</p> <p>22 the end of 2014?</p> <p>23 THE WITNESS: I'm sorry. Can I ask to have</p> <p>24 that question read back.</p>

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<p style="text-align: right;">Page 297</p> <p>1 (WHEREUPON, the record was read 2 by the reporter as requested.) 3 THE WITNESS: Yes, it's from the -- it's for 4 the entirety of the project with respect to 5 Pinnacle's involvement and the controllable 6 expenses that were incurred to again provide 7 a -- a context for what the savings that Benning 8 and Belvoir have seen post removal of Pinnacle 9 and what the financial context of that is if 10 an -- if a similar rate of savings had been 11 enjoyed at -- at CMC and Monterey. 12 BY MR. DUTTON: 13 Q. And so with respect to Monterey, just 14 listen to my question, Mr. Dudney, the savings 15 is derived from taking the 10.7 percent which 16 you've calculated at the other projects and 17 applying that to controllable costs at Monterey 18 from October 1, 2003, through the end of 2014? 19 A. Yes, for the purpose that I described 20 in my -- what you've marked as Exhibit 1 as well 21 as what I've clarified with respect to 22 Mr. Potter's criticisms in my June 5th, 2015 23 rebuttal report. 24 Q. And with respect to Section C of your</p>	<p style="text-align: right;">Page 299</p> <p>1 Q. And you've excluded from the 2012, 2013 2 and 2014 calculations at both projects the 3 amount of incentive fees that Pinnacle is due 4 under the contracts, right? 5 A. Yes, because I understand that -- 6 Q. Because they weren't paid? 7 A. Whatever amount may be due, if any, 8 there hasn't been a payment is my understanding, 9 so that's why there was nothing to disgorge and 10 so I pulled those out. 11 Q. And you have not offset from these 12 numbers the value of the property management 13 agreements themselves, have you? 14 A. I have not offset anything with respect 15 to any alleged value of the property management 16 agreements. 17 Q. Is it your understanding that if the 18 property management agreements were terminated 19 that Pinnacle would forfeit its interest, its 20 financial interest in the property management 21 agreements? 22 MS. WELCH: Objection, calls for a legal 23 conclusion. 24 THE WITNESS: Yeah, I don't know that I have</p>
<p style="text-align: right;">Page 298</p> <p>1 summary opinion, that is about disgorgement, 2 right? 3 A. Yes. 4 Q. And basically Section C just calculates 5 the total fees that was received by Pinnacle at 6 each of the projects, correct? 7 A. Yes. 8 Q. And there are two categories of fees. 9 There is property incentive management fees, 10 right? 11 A. Yes. 12 Q. And there is management fees at each 13 project, correct? 14 A. Correct. 15 Q. And you've simply summed up the total 16 amounts that were actually paid, right? 17 A. Yes. 18 Q. And you have not set off any other 19 compensation or reimbursement that Pinnacle was 20 entitled to, but didn't receive? 21 A. I have not offset these numbers for 22 claims for fees or other amounts that Pinnacle 23 believes it is due and owing. I haven't done 24 such an offset.</p>	<p style="text-align: right;">Page 300</p> <p>1 a view or a conclusion one way or the other. 2 BY MR. DUTTON: 3 Q. Do you have a view or conclusion that 4 the property -- whether or not the property 5 management agreements have a value to Pinnacle? 6 A. Well, I look at them in -- in the 7 context of the solvency analysis that I do and 8 with respect to my evaluation of the claims in 9 this case, and so from that perspective, I have 10 a -- from a solvency standpoint, I have a 11 viewpoint which is that there -- for 12 consideration under that paradigm, there's 13 little to no value that should be ascribed to 14 them separate and apart from what I've done in 15 terms of looking at the cash flows with them, 16 but that's the context in which I looked at it. 17 Q. Have you reviewed Pinnacle's financial 18 statements from prior to the litigation? 19 A. I may have at some point. I don't -- 20 as I sit here today, I can't recall if I did. 21 When you -- when you say the litigation, just 22 the Monterey litigation or the whole -- 23 Q. The entire litigation. 24 A. I may have at some point, Mr. Dutton.</p>

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<p style="text-align: right;">Page 301</p> <p>1 I mean, I've been involved in this case since 2 '09. 3 Q. Are -- are you familiar with the 4 allegations of the -- I think it's the fifth 5 amended complaint that was filed in this case? 6 A. I've seen the fifth amended complaint. 7 Q. Are you familiar with the allegations 8 in that complaint that Pinnacle financial 9 statements showed that Pinnacle in its entirety 10 had a value of upwards \$160 million in March 11 of 2010? 12 THE WITNESS: Let me ask to have that read 13 back. 14 (WHEREUPON, the record was read 15 by the reporter as requested.) 16 THE WITNESS: I don't recall a specific 17 allegation with respect to that. 18 BY MR. DUTTON: 19 Q. Okay. Section D addresses your 20 opinions concerning the sale from AMS or 21 American Management Services of certain assets 22 to a newly formed company called Pinnacle 23 Property Management Services, correct? 24 A. Yes.</p>	<p style="text-align: right;">Page 303</p> <p>1 being shared. I also looked at due diligence 2 documents in this -- some of these came 3 subsequent to the issuance of my March 27th 4 report. Obviously some of the depositions were 5 taken after that, but writ large as I sit here 6 today, those would be examples of the kinds of 7 documents that I looked at for purposes of this 8 analysis. 9 Q. On page -- Pages 65 and 66, you go 10 through an analysis of the sale process. Do you 11 see that? 12 A. I think it's a description more than an 13 analysis per se. I just describe what 14 I understand took place. 15 Q. And your understanding is that sometime 16 in the first -- last quarter of 2012, first 17 quarter of 2013 Pinnacle hired Alexander Hutton? 18 A. I -- I have it noted is they were 19 engaged in the first quarter of 2013. 20 Q. And Alexander Hutton essentially acted 21 as investment banker or a broker to help market 22 the nonmilitary assets of AMS? 23 A. Yes. 24 Q. And you understand that not all of the</p>
<p style="text-align: right;">Page 302</p> <p>1 Q. And what documents did you review in 2 order to give your opinions in that matter? 3 A. Quite a few. It was the confidential 4 information memoranda that was put together by 5 Alexander Hutton. It was various bid-related 6 documents that were produced with respect to 7 other parties or summaries of those bids. It 8 was financial projections that were prepared by 9 Pinnacle. It was financial statements of AMS. 10 There was the agreements -- the purchase and 11 sale agreement documents themselves that 12 articulate how the transaction was structured 13 and all the Ts and Cs or the terms and 14 conditions around that. 15 I also looked at deposition testimony. 16 I read Mr. Petrie's testimony. I read -- I 17 think it's Mr. Hardman who is the -- who is the 18 Alexander Hutton representative. I reviewed 19 Mr. Hunt's deposition testimony. I reviewed 20 Mr. Harrelson's deposition testimony. 21 I reviewed Mr. Goodman's deposition testimony in 22 that regard, Mr. Graf's testimony. 23 I also looked at e-mail correspondence 24 in other contemporaneous information that was</p>	<p style="text-align: right;">Page 304</p> <p>1 assets of AMS were sold in connection with the 2 sale? 3 A. I do. 4 Q. And have you made an effort to 5 determine whether the assets that were sold were 6 substantially all of the assets or a portion of 7 the assets, or what portion of Pinnacle's assets 8 were sold in connection with the sale to Hunt? 9 A. A significant portion. It was all the 10 nonmilitary assets largely that left then the 11 AMS to then hold the military contracts and then 12 a series of I'll call them one off either 13 receivables or other financial assets or certain 14 liabilities that existed then post transaction. 15 Q. Now -- now, what were the assets, the 16 nonmilitary assets that were sold? What was the 17 nature of those assets? 18 A. Management agreements in a business 19 around the management of essentially apartment 20 buildings. 21 Q. Anything else? 22 A. That was the nature of the business. 23 They were a series and I forget the total number 24 of management agreements. There was also a -- a</p>

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<p style="text-align: right;">Page 305</p> <p>1 smaller what is termed asset management business</p> <p>2 as well that is part of what was conveyed.</p> <p>3 Q. And that was owned by an entity other</p> <p>4 than AMS, correct?</p> <p>5 A. As I understand it, it was --</p> <p>6 I understand that earlier in time, roughly 2011,</p> <p>7 that business was owned -- there was a business</p> <p>8 that owned -- I think it was 50/50</p> <p>9 Mr. Harrelson, Mr. Goodman or something close to</p> <p>10 that that was considered the asset management</p> <p>11 business, and then I believe that that asset</p> <p>12 management business was contributed as part of</p> <p>13 AMS or became part of the AMS business at and</p> <p>14 around that 2011 time period and then it was</p> <p>15 subsequently included in the assets that were</p> <p>16 sold is my understanding.</p> <p>17 Q. When you say contributed to the AMS</p> <p>18 business, did the original entity that owned the</p> <p>19 asset management business receive any</p> <p>20 compensation at the time that those assets were</p> <p>21 contributed to the AMS business?</p> <p>22 A. No, there was some -- I don't know that</p> <p>23 I can say whether definitively they're not -- or</p> <p>24 not there was some compensation at the time, but</p>	<p style="text-align: right;">Page 307</p> <p>1 A. Not exactly. It's one of two -- that</p> <p>2 is one element of it, but there are essentially</p> <p>3 two -- the -- the way it works to my</p> <p>4 understanding from my experience in doing these</p> <p>5 types of cases is that there is -- the first</p> <p>6 criteria is you can have actual fraud which is</p> <p>7 the sentence that you just read with actual</p> <p>8 intent to, and it says at the top of Page 64,</p> <p>9 hinder, delay or defraud any creditor or debtor,</p> <p>10 full stop.</p> <p>11 Then, second, there is a concept</p> <p>12 legally that's called constructive fraud, and</p> <p>13 constructive fraud is when a series of</p> <p>14 conditions exist and that is that -- that, one,</p> <p>15 you don't receive a reasonably equivalent value</p> <p>16 in exchange for a transfer and the debtor was</p> <p>17 essentially insolvent and -- and there are two</p> <p>18 articulations of how solvency is determined, but</p> <p>19 if you're -- the premise goes that if you're</p> <p>20 insolvent and you don't get reasonably</p> <p>21 equivalent value for an asset that went out the</p> <p>22 door, that's a constructive fraud for purposes</p> <p>23 of fraudulent transfer law.</p> <p>24 Q. And -- and I take it that based on the</p>
<p style="text-align: right;">Page 306</p> <p>1 I do know that there were issues that were</p> <p>2 raised by Mr. Harrelson and he felt like he was</p> <p>3 not fairly treated with respect to the</p> <p>4 contribution of those assets.</p> <p>5 Q. Now, fraudulent transfers, you -- I --</p> <p>6 I read in your CV that you actually work in this</p> <p>7 area quite frequently; is that correct?</p> <p>8 A. I've been involved in a number of</p> <p>9 fraudulent transfer cases over time.</p> <p>10 Q. Okay. And -- and if I understand it</p> <p>11 correctly, and you can correct me if I'm wrong,</p> <p>12 the owners in this case are potential creditors</p> <p>13 because they have claims against AMS; is that</p> <p>14 right?</p> <p>15 A. Yes, they would have what you would</p> <p>16 call disputed or -- and/or contingent claims</p> <p>17 against AMS.</p> <p>18 Q. And the idea of a fraudulent transfer</p> <p>19 is the -- the debtor, if you will, and I'm using</p> <p>20 that term not as you would use it in a -- in the</p> <p>21 context of a bankruptcy, but just whoever the</p> <p>22 creditor is claiming owes money is transferring</p> <p>23 assets with the intent to hinder or delay or</p> <p>24 defraud a creditor, right?</p>	<p style="text-align: right;">Page 308</p> <p>1 summary of opinions that you have in your</p> <p>2 report, that you are talking about the</p> <p>3 constructive version of that?</p> <p>4 A. I am. I don't have a separate opinion</p> <p>5 with -- I don't render a separate opinion with</p> <p>6 respect to actual intent to hinder, delay or</p> <p>7 defraud, although I will say that the</p> <p>8 characterizations financially of the</p> <p>9 transactions that I've looked at may well go to</p> <p>10 the plaintiff's assertion that, in fact, there</p> <p>11 was an actual intent to hinder, delay or defraud</p> <p>12 a creditor, and so I've -- I -- I might -- as</p> <p>13 I understand it, might be asked to describe</p> <p>14 how -- my understanding of how the transaction</p> <p>15 worked that might be a component of that</p> <p>16 situation, but I don't opine that one way or the</p> <p>17 other because that's a legal determination.</p> <p>18 Q. And in your expert report, your</p> <p>19 opinions relate to transactions that you claim</p> <p>20 or that you opine represent constructively</p> <p>21 fraudulent transfers, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you don't opine that any</p> <p>24 transaction is a transaction made with actual</p>

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<p style="text-align: right;">Page 309</p> <p>1 intent to hinder, delay or defraud any creditor?</p> <p>2 A. That's correct. I don't have an</p> <p>3 opinion that says that, but I -- as I understand</p> <p>4 it, the -- because I've analyzed or</p> <p>5 deconstructed the transaction and understood</p> <p>6 how -- understand how it works for the purposes</p> <p>7 of my report, that some of those observations</p> <p>8 that I make in the report, I could anticipate</p> <p>9 that those might be used by counsel to make</p> <p>10 whatever case it's going to make as if it</p> <p>11 decides to assert on behalf of the plaintiffs</p> <p>12 that there was, in fact, actual intent to</p> <p>13 hinder, delay or defraud a creditor.</p> <p>14 Q. Now, your understanding is that the</p> <p>15 transfer -- well, the owners in this case are</p> <p>16 the potential creditors, right?</p> <p>17 A. Yes, it's the claim -- it's essentially</p> <p>18 the claim -- the claimants who would be the</p> <p>19 plaintiffs.</p> <p>20 Q. The owners are making a claim for</p> <p>21 fraudulent transfer?</p> <p>22 A. Yes, as I understand it.</p> <p>23 Q. And is it your understanding that the</p> <p>24 owners had the ability to seize control of the</p>	<p style="text-align: right;">Page 311</p> <p>1 to PPMS into cash to satisfy those judgments?</p> <p>2 A. Well, if they -- if the owners obtained</p> <p>3 a judgment against AMS that would then bring --</p> <p>4 and they were a substantial creditor and let's</p> <p>5 just say for sake of your question, if you're</p> <p>6 okay with it, that at that point that would make</p> <p>7 what are now disputed claims liquidated and</p> <p>8 let's -- if we assume for a second that that</p> <p>9 would swamp AMS in terms of its financial</p> <p>10 resources, so one avenue -- and there are</p> <p>11 different ones, but one avenue would be that</p> <p>12 there could be an assignment for the benefit of</p> <p>13 creditors that could take place to basically</p> <p>14 avoid a bankruptcy. There could also be a</p> <p>15 bankruptcy where there's a prepackaged deal</p> <p>16 where the owners in settlement of their claims</p> <p>17 get certain rights and interests in the assets</p> <p>18 of AMS so -- because there are potentially other</p> <p>19 creditors.</p> <p>20 Having said that, the way that they</p> <p>21 would turn those into cash could be a</p> <p>22 couple-fold. One is they could as the -- they</p> <p>23 could take over the equity, for example, if it's</p> <p>24 demonstrated that there's no value to equity of</p>
<p style="text-align: right;">Page 310</p> <p>1 assets that were actually transferred and turn</p> <p>2 them into cash to satisfy a potential judgment?</p> <p>3 MS. WELCH: Objection, form.</p> <p>4 THE WITNESS: If I understand your question</p> <p>5 correctly, and let me just make sure I've got</p> <p>6 it, which is you're asking me whether or not</p> <p>7 I understand if the creditors or the owners as</p> <p>8 the creditor in this discussion we're having had</p> <p>9 the right to seize --</p> <p>10 BY MR. DUTTON:</p> <p>11 Q. Not the right.</p> <p>12 A. Okay.</p> <p>13 Q. The ability.</p> <p>14 A. The ability to seize the assets that</p> <p>15 were transferred?</p> <p>16 Q. Let's assume that there was a big</p> <p>17 judgment, that you're -- let's assume that</p> <p>18 there's a \$20 million judgment and that that</p> <p>19 judgment is trebled and then you throw</p> <p>20 attorneys' fees on top of that and you have a</p> <p>21 great big whopping judgment. Okay?</p> <p>22 A. Large number, yes.</p> <p>23 Q. And how are the owners going to get --</p> <p>24 going to turn the assets that were transferred</p>	<p style="text-align: right;">Page 312</p> <p>1 AMS, they could as part of a bankruptcy, for</p> <p>2 example, become the equity holders and they</p> <p>3 could choose to simply run those assets or</p> <p>4 manage them and collect the cash flows from them</p> <p>5 and do whatever they thought was appropriate.</p> <p>6 They could obviously sell the assets in some</p> <p>7 way, shape or form as part of a --</p> <p>8 Q. When you say "sell the assets," sell</p> <p>9 the property management agreements?</p> <p>10 A. They could sell the property management</p> <p>11 agreements. They could restructure the</p> <p>12 business, sell portions of the business to</p> <p>13 manage those -- those contracts. I mean, there</p> <p>14 are several thousand employees that are employed</p> <p>15 by the businesses that were -- or the business</p> <p>16 that was sold as part of that asset sale, so</p> <p>17 there would be -- and I could go on. I mean,</p> <p>18 there could be machinations of that, but</p> <p>19 conceptually those would be ways that they could</p> <p>20 extract value from those assets if they were</p> <p>21 awarded a judgment and able to move forward with</p> <p>22 certain actions that a creditor has.</p> <p>23 Q. Can you assign a personal services</p> <p>24 contract?</p>

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<p style="text-align: right;">Page 313</p> <p>1 MS. WELCH: Objection, calls for a legal 2 conclusion. 3 THE WITNESS: Yeah, I can't -- I can't opine 4 one way or the other about that. 5 BY MR. DUTTON: 6 Q. Is it possible for a bankruptcy court 7 to sell a personal services contract out of 8 bankruptcy? 9 MS. WELCH: Same objection. 10 THE WITNESS: Yeah, I don't have an opinion 11 about that. 12 BY MR. DUTTON: 13 Q. You don't know one way or the other? 14 A. It's not something I've looked at here 15 for purposes of this. 16 Q. Are you aware that the property 17 management agreements between AMS and its 18 nonmilitary clients allow for termination for 19 convenience? 20 A. Yes. 21 Q. There's no obligation that the 22 management of AMS would have to continue working 23 for a new owner? 24 A. I -- I think that's correct. I don't</p>	<p style="text-align: right;">Page 315</p> <p>1 type of money that they could use to satisfy a 2 judgment? 3 A. Because everything that you just said, 4 putting aside the legal or the questions that 5 you asked me, putting aside the legal 6 determinations that I think you were asking me, 7 while they could happen, they also may not 8 happen, and so whether or not the clients would 9 stay with the business if there was a judgment, 10 is -- it's not -- it's certainly not definitive 11 that they would not. There -- as I said the 12 organization is a 2600-person organization 13 roughly that's providing services and -- to 14 those entities and whether or not and to what 15 extent that they would stay with the company 16 would depend on the facts and the circumstances 17 as to how the -- the creditors in this set of 18 questions that we're talking about, how they 19 elevated themselves to something other than 20 where they sit today and what benefit they 21 might -- they might obtain. 22 Q. Don't fraudulent transfer claims assume 23 that the creditor is injured as a result of the 24 fraudulent transfer?</p>
<p style="text-align: right;">Page 314</p> <p>1 think there's an obligation to do it. 2 Q. There's no obligation that the 3 customers of AMS would have to stay with the 4 company if the company had new ownership or was 5 somehow sold in bankruptcy to the owners, right? 6 A. I think it -- again, I've reviewed a 7 number of the individual contracts that were 8 conveyed as part of the sale and I think they 9 have termination provisions which would allow 10 some flexibility with respect to that, so yes, 11 they would have some ability to cancel the 12 contract. 13 Q. They probably have default conditions 14 like the one in the property management 15 agreements that you've seen that say that if 16 Pinnacle declares bankruptcy, the agreements are 17 terminated? 18 A. It's -- I -- I would have to look to 19 see about that particular aspect of the 20 agreement, but having provisions like that is 21 not uncommon. 22 Q. So just how is it that the owners if 23 they had a judgment or any judgment creditor, 24 would turn these assets into cash or -- or some</p>	<p style="text-align: right;">Page 316</p> <p>1 A. The -- because there has to be a 2 reasonably equivalent value or a lack thereof in 3 order for a transfer to be avoided, that's how a 4 creditor is injured and so you find you have to 5 demonstrate that there was not reasonably 6 equivalent value that was provided. 7 Q. Are you familiar with the fact that if 8 a creditor cannot show that the debtor's assets 9 would be available for execution of a judgment, 10 that there is no fraudulent transfer claim 11 because there's no injury? 12 A. Again, it sounds to me like a bit of a 13 legal opinion as to what the courts would say as 14 to whether or not the assets would be available, 15 but I -- I do understand that there is a concept 16 that -- that the creditors have to be or 17 demonstrate through the claim that they are 18 injured and, again, the primary way that I'm 19 involved in those claims is by analyzing 20 reasonably equivalent value as I did here. 21 Q. And -- and reasonably equivalent value 22 injures a creditor because if the asset has a 23 value that the creditor could use to satisfy a 24 judgment and the asset is sold for less than</p>

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<p style="text-align: right;">Page 317</p> <p>1 reasonably equivalent value, then the amount of</p> <p>2 money that the creditor could seize or control</p> <p>3 to satisfy a judgment has been diminished,</p> <p>4 correct?</p> <p>5 A. Generally I think that's correct.</p> <p>6 Q. But if the asset is an intangible asset</p> <p>7 that doesn't have a value except to the -- to</p> <p>8 the debtor, for example, then the creditor</p> <p>9 hasn't been injured, right?</p> <p>10 A. There may be scenarios that would --</p> <p>11 would meet that criteria that you're describing,</p> <p>12 but I think again each -- each case is very</p> <p>13 individualistic in terms of its assessment. You</p> <p>14 can certainly have intangible assets that are</p> <p>15 very valuable that can be sold to third parties</p> <p>16 or otherwise converted into value, so there's a</p> <p>17 variety of ways that it could manifest itself.</p> <p>18 Q. Now, you don't express an opinion one</p> <p>19 way or the other in your expert report that the</p> <p>20 \$30 million purchase price paid for the assets</p> <p>21 was less than the reasonably equivalent value,</p> <p>22 do you?</p> <p>23 A. The sale itself, no, I do not.</p> <p>24 Q. So the -- the letter from Alexander</p>	<p style="text-align: right;">Page 319</p> <p>1 familiar with the law and it's your</p> <p>2 understanding that typically all other things</p> <p>3 being equal, fair market value is seen as</p> <p>4 reasonably equivalent value?</p> <p>5 A. Yes.</p> <p>6 Q. Your opinions solely relate to what you</p> <p>7 call purchase price adjustments, and essentially</p> <p>8 these are payments or adjustments that were made</p> <p>9 after the \$30 million purchase price was agreed</p> <p>10 to?</p> <p>11 A. I have a series of opinions around</p> <p>12 certain transfers that were made that would</p> <p>13 be -- they're viewed as deducts because they are</p> <p>14 deducts to the \$30 million top line price.</p> <p>15 There are a series of those that then I identify</p> <p>16 as fraudulent transfers.</p> <p>17 Q. Well, they're not deducts to the price,</p> <p>18 are they?</p> <p>19 A. They're deducts to the enterprise value</p> <p>20 of the entity.</p> <p>21 Q. They're a disposition of the proceeds,</p> <p>22 correct?</p> <p>23 A. They're also deducted in order to get</p> <p>24 to the net cash that is provided so --</p>
<p style="text-align: right;">Page 318</p> <p>1 Hutton, for example, which opines -- or purports</p> <p>2 to opine that the sale price of \$30 million can</p> <p>3 be seen as reasonably equivalent value, you</p> <p>4 don't have any disagreement with that?</p> <p>5 A. I haven't challenged the \$30 million as</p> <p>6 a -- as not being representative of fair value,</p> <p>7 it's -- that opinion -- I've looked at a lot of</p> <p>8 transactions in my career and that's the first</p> <p>9 time I've seen an opinion like that by an</p> <p>10 investment banker, but nonetheless, the -- I</p> <p>11 have not challenged the \$30 million top line</p> <p>12 price for purpose of the -- the analysis that</p> <p>13 I've done.</p> <p>14 Q. And you don't have an opinion then that</p> <p>15 the assets that AMS sold to PPMS were worth tens</p> <p>16 or million dollars more than 30 million?</p> <p>17 A. I do not.</p> <p>18 Q. And Mr. -- or Alexander Hutton's letter</p> <p>19 also states that \$30 million can be seen as the</p> <p>20 fair market value because of the process, the</p> <p>21 bidding process that was -- was gone through in</p> <p>22 connection with the sale, right?</p> <p>23 A. They do talk about that.</p> <p>24 Q. And you're familiar with -- generally</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. Well, the ultimate proceeds are after</p> <p>2 the deductions, I'll agree with you there --</p> <p>3 A. Yes.</p> <p>4 Q. -- but it's not -- it's not an</p> <p>5 adjustment to the purchase price, is it?</p> <p>6 A. I think mechanically the way it worked</p> <p>7 was no, it wasn't, but they -- the practical</p> <p>8 aspect of it was that they resulted to our early</p> <p>9 part of our -- my point on this is that they --</p> <p>10 they have the effect of a certain deduction</p> <p>11 given the portion of the company that was sold.</p> <p>12 Q. You're familiar with the concept of</p> <p>13 fraudulent transfer law that if -- if the debtor</p> <p>14 transfers an asset that has a lien on it and the</p> <p>15 lien is greater than the value of the asset,</p> <p>16 then it's not a fraudulent transfer?</p> <p>17 A. Uh-huh. There's certainly --</p> <p>18 Q. Correct?</p> <p>19 A. There's certainly a body of case law</p> <p>20 around that. It's -- it's a complex area and so</p> <p>21 it's not quite as cut and dry, but yes, the --</p> <p>22 the value of the lien is something that is --</p> <p>23 can be considered.</p> <p>24 Q. And the reason that that's not a</p>

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<p style="text-align: right;">Page 321</p> <p>1 fraudulent transfer is because if there is a 2 preexisting lien, then transferring the asset 3 has no -- causes no injury to the creditor? 4 A. Depends on the -- my understanding is 5 it depends on the nature of the lien. 6 Q. And the nature of the asset? 7 A. Yes. 8 Q. Now, do you know what the value of 9 management equity in Pinnacle would have been 10 and AMS would have been if there had been a 11 hundred-million-dollar judgment against AMS? 12 THE WITNESS: Let me ask to have the question 13 read back to make sure i got it. 14 (WHEREUPON, the record was read 15 by the reporter as requested.) 16 THE WITNESS: Zero. 17 BY MR. DUTTON: 18 Q. You're claiming that these -- the use 19 of the proceeds of the purchase price for 20 payment of liabilities assumed by the buyer -- 21 sorry -- yeah, payment for liabilities assumed 22 by buyer funded by seller, do you see that? 23 A. Which page are you looking at? 24 Q. I'm on Page 68, liabilities assumed by</p>	<p style="text-align: right;">Page 323</p> <p>1 Q. And when they became employees of PPMS, 2 PPMS had those liabilities, right? 3 A. Yes. 4 Q. And so part of the proceeds were used 5 to fund those liabilities, correct? 6 A. Yes, correct. 7 Q. Would -- would -- if there had been 8 a -- or would a judgment creditor have priority 9 to those liabilities over the employees that had 10 accrued -- 11 A. I think that's a legal question. I 12 don't think so, but I think it's a legal 13 question. 14 Q. All right. The second 1,478,000 15 associated with corporate level vacation 16 liabilities, that's essentially the same thing 17 except it's for a different group of employees, 18 right? 19 A. Correct. 20 Q. So that's money that AMS owed to 21 corporate level employees for vacation 22 liabilities and when they became PPMS employees, 23 PPMS owed that money? 24 A. Correct.</p>
<p style="text-align: right;">Page 322</p> <p>1 buyer -- 2 A. I'm sorry. One second. 3 Q. -- funded by seller. I think I'm 4 reading that correctly. 5 A. There was a reduction in the 6 consideration -- well, I'm sorry. You're 7 looking at -- there were liabilities that were 8 conveyed for Pinnacle to PPMS and those were 9 deductions that then were in terms of what the 10 net cash proceeds were that were paid -- 11 Q. So -- so as a result of the 12 transaction, a lot of -- almost all of the 13 employees from AMS became employees of PPMS, 14 right? 15 A. Yes, I think the way it worked is that 16 they were stopped being employees one day of one 17 entity and then started being employees the next 18 day of the other entity. 19 Q. And the \$4.2 million that's associated 20 with accrued site level vacation liabilities, 21 that's the amount of money that AMS owed its 22 employees for accrued vacation at each of the 23 sites, right? 24 A. Yes.</p>	<p style="text-align: right;">Page 324</p> <p>1 Q. And AMS funded that liability? 2 A. There was -- I would say it slightly 3 differently is that there was a recognition of 4 that in the purchase such that PPMS was able to 5 reduce the amount of cash that it paid in 6 recognition of assumption of that liability. 7 Q. AMS used the proceeds even if it bid on 8 credit, to fund that liability, right? 9 A. The liability was -- was transferred 10 and there was a reduction to the proceeds as a 11 result of it, I mean -- 12 Q. The proceeds were deducted by 13 \$1.4 million -- 14 A. Yes. 15 Q. -- because of that liability? 16 A. Correct. 17 Q. And do you know whether or not a 18 judgment creditor would have had priority over 19 the employees with respect to that accrued 20 vacation liability? 21 A. Again, I think it's a legal question 22 and not something that I considered because 23 these aren't part of the fraudulent transfers 24 that I claim.</p>

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<p style="text-align: right;">Page 325</p> <p>1 Q. These are not part of the fraudulent</p> <p>2 transfers?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. So everything that's in</p> <p>5 Section 2, liabilities assumed by buyer, funded</p> <p>6 by seller, are not part of the fraudulent</p> <p>7 transfers?</p> <p>8 A. No, they're separately denoted. The</p> <p>9 fraudulent transfers are noted in Table 34 on</p> <p>10 Page 88. These are just the deductions --</p> <p>11 Q. You should have said that earlier then</p> <p>12 I could have --</p> <p>13 A. I wasn't sure where you were going, but</p> <p>14 I got the sense that you were maybe</p> <p>15 misconsidering those, but, yeah, it's Page 88</p> <p>16 are the list of the transfers that I list and</p> <p>17 include.</p> <p>18 MR. DUTTON: Ah. All right. Why don't we</p> <p>19 take a break and then we can come back and</p> <p>20 finish this up.</p> <p>21 THE WITNESS: Great. Thank you.</p> <p>22 THE VIDEOGRAPHER: We are off the record at</p> <p>23 5:11 p.m.</p> <p>24</p>	<p style="text-align: right;">Page 327</p> <p>1 A. There are a series of agreements for</p> <p>2 four of the five that are listed. As</p> <p>3 I understand it, I don't believe that</p> <p>4 Mr. Orrantia has an agreement. Mr. Petrie I</p> <p>5 believe testified that Mr. Orrantia was paid a</p> <p>6 \$250,000 bonus because Mr. Petrie made a</p> <p>7 judgement that that was an amount of money that</p> <p>8 he should be paid. He had from -- from what</p> <p>9 I saw in the record, had very little involvement</p> <p>10 in the deal. I think it was described that he</p> <p>11 put Mr. Hunt in touch at one point in time</p> <p>12 with -- with Mr. Goodman and arranged for a</p> <p>13 meeting, but that was all that seemed to be</p> <p>14 taking place with Mr. Orrantia.</p> <p>15 With respect to the other gentlemen,</p> <p>16 they had agreements that were -- as I read them,</p> <p>17 they were bonus agreements that provided for a</p> <p>18 bonus in the event that there was a transaction</p> <p>19 at various levels and so I would -- they weren't</p> <p>20 as I could -- as far as I could tell based on</p> <p>21 the record, they did not appear to be very</p> <p>22 actively involved in the sale process itself</p> <p>23 with Hunt as an example, taking Mr. Hunt's</p> <p>24 testimony as an example, he describes -- and</p>
<p style="text-align: right;">Page 326</p> <p>1 (WHEREUPON, a short break was</p> <p>2 taken.)</p> <p>3 THE VIDEOGRAPHER: We are on the record at</p> <p>4 5:20 p.m.</p> <p>5 BY MR. DUTTON:</p> <p>6 Q. A couple things, Mr. Dudney. So the --</p> <p>7 the -- the transfers, whether you refer to them</p> <p>8 as transfers of the proceeds of the purchase</p> <p>9 price or transfers after the purchase price,</p> <p>10 the \$30 million was agreed to or whatever you</p> <p>11 want to call them, these are transfers in</p> <p>12 Table 34 that you believe were made and you</p> <p>13 believe that they are constructive fraudulent</p> <p>14 transfers?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And with respect to the specific</p> <p>17 bonuses that you categorize or itemize in</p> <p>18 Table 34, those are the bonuses that were paid</p> <p>19 to AMS managers -- senior managers for their</p> <p>20 work in putting together the sale of assets that</p> <p>21 was ultimately made to Hunt, right?</p> <p>22 A. I wouldn't describe them that way.</p> <p>23 Q. Okay. What would you describe them as,</p> <p>24 Mr. Dudney?</p>	<p style="text-align: right;">Page 328</p> <p>1 it's consistent with Mr. Graf that, you know, it</p> <p>2 was really Mr. Hunt and Mr. Goodman that -- and</p> <p>3 that's Mr. John Goodman, not Larry, that were</p> <p>4 involved in the negotiating of the deal.</p> <p>5 So these were bonuses, though, that</p> <p>6 were paid contingent upon a deal getting done at</p> <p>7 what I would consider to be very reduced -- very</p> <p>8 reduced enterprise values, so I'm not --</p> <p>9 I haven't been able to identify what I would</p> <p>10 consider to be reasonably equivalent value that</p> <p>11 was provided for purposes of those bonuses.</p> <p>12 Q. Okay. So -- and when you say "those</p> <p>13 bonuses," you're talking about Mr. Graf's bonus,</p> <p>14 Mr. Larry Goodman's bonus, Mr. John Carrosino's</p> <p>15 bonus and Mr. Schwabe's bonus?</p> <p>16 A. Yes, and Mr. Orrantia, except that he</p> <p>17 didn't have the bonus agreement. The other</p> <p>18 folks did.</p> <p>19 The other thing I would point out with</p> <p>20 respect to those bonuses for everybody but</p> <p>21 Orrantia, because again Orrantia doesn't have an</p> <p>22 agreement, is that agreement has some terms and</p> <p>23 conditions which again I'm not rendering a legal</p> <p>24 opinion with respect to it, but I noted it when</p>

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<p style="text-align: right;">Page 329</p> <p>1 I reviewed the contracts, that it would appear 2 to indicate that for any of the management 3 members that obtained an ownership interest in 4 PPMS, that they wouldn't be due the bonus yet 5 they were paid the bonus nonetheless. So anyway 6 that's -- there were a number of reasons that 7 I included those as fraudulent transfers, but 8 those are a couple. 9 Q. Okay. So you basically -- what your -- 10 what your opinion is is that Mr. Graf's work 11 that he did in order to earn this bonus of 12 \$420,000, in your opinion, is not worth -- or is 13 not the reasonably equivalent value of \$420,000? 14 A. Given -- generally speaking, that's 15 correct that there was -- I mean, he was a 16 highly-compensated individual that had been -- a 17 bonus agreement that was put together that the 18 top rung, if you will, of that bonus ladder was 19 I believe an enterprise value target of 20 \$20 million which is two-thirds of what the 21 value of the entity ultimately was demonstrated 22 to be, so it -- he got his full bonus, if you 23 will, for delivering something that was 24 two-thirds, excuse me, of what was actually</p>	<p style="text-align: right;">Page 331</p> <p>1 so it had already happened, and so now then 2 there's a subsequent payment that's made out of 3 this deal for 675,000. Mr. Goodman testifies 4 that his view was that this was worth zero, but 5 nonetheless, this was an amount that he and 6 Mr. Harrelson agreed to, but that was 7 essentially a -- a payment for an asset that 8 already existed and had been transferred again, 9 as I said, years earlier, so it's not the same 10 transaction -- 11 BY MR. DUTTON: 12 Q. The asset was -- the asset was owned 13 separately from AMS, correct? 14 A. It was at one point in time. 15 I understand that it was contributed and I talk 16 about that in here, I think, in -- 17 Q. Was there any -- 18 A. -- 2011. 19 MS. WELCH: Can you let him finish? 20 BY MR. DUTTON: 21 Q. Was there any compensation at the time 22 for that contribution? 23 A. Not to my -- the allegation that 24 Mr. Harrelson is making in some of the</p>
<p style="text-align: right;">Page 330</p> <p>1 delivered, and so there was a fair 2 differentiation from that. And again, I think 3 there's a -- there's a case to be made and again 4 I'm not opining on this, but I just noted it 5 that the management bonus recipients should not 6 have received the bonus in light of the terms 7 and conditions of the bonus agreement itself. 8 Q. And with respect to Mr. Larry Goodman, 9 John Carrosino and Eric Schwabe, you have the 10 same opinions? 11 A. That's correct. It's not -- it's not 12 directed just at one of those individuals. It's 13 conceptually the same across the board. 14 Q. And you also state in here that you 15 believe that the payment to Mr. Harrelson of 16 \$675,000 for the asset management business, if 17 you will, that went along with the cascade and 18 olympic portfolio or platform, that that was not 19 reasonably equivalent value? 20 MS. WELCH: Objection to form. 21 THE WITNESS: That there -- my opinion is 22 that Mr. Harrelson -- as I understand it, that 23 contribution had occurred years earlier, that 24 that actually had taken place years earlier and</p>	<p style="text-align: right;">Page 332</p> <p>1 discussions and e-mails and things back and 2 forth is no, so if I -- if I assume and take him 3 at his word on that, that -- that there was 4 none, but it was nonetheless contributed to the 5 business and yet now years later he's getting a 6 payment for it, that's to me two separate 7 transactions now because the asset was already 8 in the control of the business. 9 Q. Do you know whether the business had 10 the legal right to control the asset without 11 Mr. Harrelson's consent? 12 MS. WELCH: Objection, calls for a legal 13 conclusion. 14 THE WITNESS: Yeah, I -- I haven't analyzed 15 the -- the legal aspect of that, but my just 16 understanding from a financial perspective was 17 that the -- AMS had ownership of that asset at 18 the time of the transfer. 19 BY MR. DUTTON: 20 Q. Have you seen any documents evidencing 21 AMS's ownership of that asset? 22 A. Well, I think the purchase and sale 23 agreement allowed AMS to convey that as part of 24 that --</p>

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<p style="text-align: right;">Page 333</p> <p>1 Q. That wasn't my question. My question</p> <p>2 was have you seen any assets conveying ownership</p> <p>3 of that asset to AMS?</p> <p>4 A. I think you mean documents?</p> <p>5 Q. Yeah. Didn't I say documents?</p> <p>6 A. You said assets, yes.</p> <p>7 Q. Okay. Have you seen any documents</p> <p>8 conveying ownership of that asset to AMS from</p> <p>9 the entity controlled by Mr. Harrelson and</p> <p>10 Mr. Goodman?</p> <p>11 A. I don't -- I think -- I don't know that</p> <p>12 there are specific documents other than</p> <p>13 Mr. Harrelson articulating this issue in such a</p> <p>14 way that would be consistent with the conclusion</p> <p>15 that they were transferred and contributed years</p> <p>16 earlier --</p> <p>17 Q. You said Mr. Harrelson now. I think</p> <p>18 you mean Mr. Goodman?</p> <p>19 A. No, it was Mr. Harrelson had said that</p> <p>20 it -- that he felt that those assets were</p> <p>21 contributed, and at the time they were</p> <p>22 contributed, he didn't get compensation --</p> <p>23 Q. And where did you discuss that?</p> <p>24 A. I'm sorry?</p>	<p style="text-align: right;">Page 335</p> <p>1 Q. Your report does not cite to any</p> <p>2 specific documents that support the proposition</p> <p>3 that the asset management rights were previously</p> <p>4 contributed to Pinnacle, does it?</p> <p>5 A. I believe that now the letter from</p> <p>6 Goodman, the resolution of outstanding matters</p> <p>7 letter, references this particular transaction.</p> <p>8 I'd have to look back at it to see if it talks</p> <p>9 about the timing of it, but I don't have a</p> <p>10 specific footnote cite for the previously</p> <p>11 contributed aspect of the prior -- of that</p> <p>12 sentence. I'd have to look to see if it's in</p> <p>13 Goodman's letter or if it's -- if it's only in</p> <p>14 the Harrelson memoranda that I am thinking</p> <p>15 about.</p> <p>16 Q. You don't have any contract or</p> <p>17 documentation that definitively determines</p> <p>18 whether or not the transfer of the asset</p> <p>19 management business to PPMS was an equity</p> <p>20 contribution, right?</p> <p>21 A. I don't have -- I don't know that we</p> <p>22 have documentation or that I've seen</p> <p>23 documentation that shows the form of how that</p> <p>24 was -- how that transfer took place. It's just</p>
<p style="text-align: right;">Page 334</p> <p>1 Q. Where do you discuss that?</p> <p>2 A. It's on Page 86, Mr. Harrelson's</p> <p>3 payment, and I also talk about it -- I don't</p> <p>4 know if I -- I may talk about it as well in my</p> <p>5 rebuttal report. Let me just look. Oh, no, I</p> <p>6 don't because he doesn't -- Mr. Potter doesn't</p> <p>7 talk about reasonably equivalent value.</p> <p>8 Q. You say for value of asset management</p> <p>9 rights that were previously contributed to</p> <p>10 Pinnacle, I see no evidence of a formal</p> <p>11 contractual obligation, John Goodman stated it</p> <p>12 was of no value, Pinnacle -- you say Pinnacle is</p> <p>13 insolvent -- my question was what's your basis</p> <p>14 for saying that the asset management rights were</p> <p>15 previously contributed to Pinnacle?</p> <p>16 A. There are -- I don't know if they're</p> <p>17 e-mails or other correspondence involving</p> <p>18 Mr. Harrelson and Mr. Goodman on this issue,</p> <p>19 that it was something that took place -- again,</p> <p>20 my best recollection is that it was in 2011.</p> <p>21 There may also be some deposition testimony</p> <p>22 around that, but it's -- Mr. Harrelson has an</p> <p>23 e-mail, if I remember correctly, or a letter</p> <p>24 that talks about this issue.</p>	<p style="text-align: right;">Page 336</p> <p>1 referenced to the fact that the transfer had</p> <p>2 taken place again years earlier and then as part</p> <p>3 of this now later transaction, Mr. Harrelson was</p> <p>4 being paid out allegedly for it.</p> <p>5 Q. And your opinion about -- of reasonably</p> <p>6 equivalent value, why is it your opinion that</p> <p>7 \$675,000 is not the reasonably equivalent value</p> <p>8 of these assets? Is it because you believe that</p> <p>9 Mr. Harrelson had no claim whatsoever in light</p> <p>10 of the contribution?</p> <p>11 A. Because it's not a contemporaneous</p> <p>12 transfer. The assets were already in the</p> <p>13 business and the creditors would have a right to</p> <p>14 those, and then there's now years later a</p> <p>15 payment associated with those or -- or a</p> <p>16 distribution of some kind.</p> <p>17 Q. How would creditors be able to seize or</p> <p>18 get their hands on asset management assets?</p> <p>19 A. To the extent that they were granted</p> <p>20 any rights in the equity of AMS, the same way</p> <p>21 that AMS would -- as equity shareholders would</p> <p>22 conduct the affairs of AMS, a creditor who steps</p> <p>23 into the shoes of those equity holders could</p> <p>24 perform the same role.</p>

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<p style="text-align: right;">Page 337</p> <p>1 Q. Now, you're familiar with fraudulent 2 transfer law, right? 3 A. To the extent that it impacts the kinds 4 of analyses that I do, I have a familiarity with 5 it. I'm again not a lawyer and so I can't 6 testify about the legal aspects of it, but just 7 I understand generally the parameters of it. 8 Q. And you understand that the Uniform 9 Fraudulent Transfer Act does not provide a cause 10 of action against the officers or the directors 11 of a corporation who direct an allegedly 12 fraudulent transfer? 13 MS. WELCH: Objection, calls for a legal 14 conclusion. 15 THE WITNESS: Yeah, I don't have an opinion 16 one way or the other about that. 17 BY MR. DUTTON: 18 Q. You're aware that the only -- the 19 potential defendants in a fraudulent transfer 20 act are the transferees or the transferors, 21 right? 22 MS. WELCH: Objection, calls for a legal 23 conclusion. 24 THE WITNESS: Yeah, not something that I've</p>	<p style="text-align: right;">Page 339</p> <p>1 to me in a nonlegal way, AMS is transferring 2 the -- is the transferor of the assets, but it's 3 being done at the direction and at the approval 4 of the primary shareholder because he's the 5 individual that negotiated these things. 6 Q. That's kind of the way corporations 7 work, isn't it, Mr. Dudney? 8 A. Depends. Sometimes shareholders are 9 active, other times management runs it and 10 shareholders are more passive. In this case I 11 think Mr. Goodman's more active with respect to 12 this type of transaction. 13 Q. Finally, you talk about -- well, what 14 do you know about the holdings that Pinnacle had 15 and that the individual principals of Pinnacle 16 had in the Hunt Pinnacle military deals? 17 THE WITNESS: Let me ask to have that 18 question read back. I'm not sure I followed it. 19 (WHEREUPON, the record was read 20 by the reporter as requested.) 21 MS. WELCH: Objection to form. 22 THE WITNESS: I'm not sure I -- when you say 23 the Hunt Pinnacle military deals, are you 24 referring to some of the notes or something</p>
<p style="text-align: right;">Page 338</p> <p>1 rendered an opinion on. 2 BY MR. DUTTON: 3 Q. Mr. Goodman didn't transfer these 4 assets, did he? 5 MS. WELCH: Objection to form. 6 THE WITNESS: I would characterize it that -- 7 oh, Mr. Goodman, is that what you asked about? 8 I thought you said -- 9 BY MR. DUTTON: 10 Q. Yeah. Mr. John -- these weren't 11 Mr. John Goodman's assets, he did not transfer 12 them to anybody, he's not a transferor nor is he 13 a transferee? 14 A. I'll say this that the -- without 15 rendering a legal opinion as to the definition 16 of a transferor, Mr. Goodman was the -- 17 certainly as a majority equity holder of AMS, it 18 was clear to me that he directed the transfer or 19 made the agreement, and he testified as much, 20 between Mr. Harrelson and Mr. Goodman and so it 21 was his decision as the primary shareholder of 22 AMS to reach an agreement to provide these funds 23 based on, you know, claims that Mr. Harrelson 24 was making so -- bless you -- I'm not sure -- so</p>	<p style="text-align: right;">Page 340</p> <p>1 else? 2 BY MR. DUTTON: 3 Q. You have this -- you have this 4 provision at the bottom of your report at the 5 bottom of Page 88 -- 6 A. Okay. 7 Q. -- that goes over to Page 89. Do you 8 see that? 9 A. Yeah, let me just quickly read it here 10 because it's a long report. Okay. I've 11 refreshed on that, two paragraphs. 12 Q. You don't know the structure of the 13 holdings that AMS had or that the individual 14 principals of AMS had in the Hunt Pinnacle 15 military deals that were sold or that were -- 16 yeah, that were sold to Hunt in March of 2011, 17 right? 18 A. I think that's fair. I have limited 19 information at this point with respect to that 20 transaction. 21 Q. Your -- your conclusion or your 22 statements made on Page 88 are based on a single 23 document describing the flow of funds from the 24 Hunt closing, but you don't have any knowledge</p>

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<p style="text-align: right;">Page 341</p> <p>1 of the legal basis that was used to put together 2 the flow of funds from the Hunt closing? 3 A. I don't think I have the closing 4 documentation with respect to that transaction. 5 I just have the flow of funds. 6 Q. And you understand that in real estate 7 deals, there are often multiple parties that 8 have interests in a particular deal through 9 multiple entities? 10 A. They -- they -- real estate deals many 11 times involve single asset entities or single 12 property entities that are structured in a 13 particular way and there could be multiple 14 versions -- or multiple iterations of that for 15 different properties. 16 Q. For example, with respect to the -- 17 let's just take the Monterey project. 18 Mr. Harrelson and Mr. Goodman had a direct 19 interest in those projects through Pinnacle 20 Monterey, correct? 21 A. Correct. 22 Q. And AMS had an interest in those 23 projects through its relationship with AMSC, its 24 subsidiary?</p>	<p style="text-align: right;">Page 343</p> <p>1 what I've articulated here just because I have, 2 you know, very limited documentation around it, 3 and so I've made the notation that I have -- 4 recognizing that if more fulsome information was 5 provided that I might be able to look at those 6 transactions in light of the transfers of value 7 that took place during the pendency of this 8 litigation in its various stages. 9 Q. Okay. And I guess the only point I was 10 making is that the distributions that were made 11 pursuant to the flow of funds from the Hunt -- 12 from the Hunt closing were probably made 13 consistent with the ownership structure of the 14 Pinnacle affiliated entities and the individuals 15 in the Hunt closing? 16 A. I can't testify one way or the other. 17 That would be I think a -- that would be my 18 assumption barring having seen -- without having 19 seen the documents, since that's the way 20 typically transactions work, but again I 21 can't -- I can't really testify one way or the 22 other just because I've seen such limited 23 information with respect to that transaction. 24 MR. DUTTON: All right. Can we take a short</p>
<p style="text-align: right;">Page 342</p> <p>1 A. That's my understanding. 2 Q. And if, for example, the entirety of 3 the Pinnacle affiliated interest was sold, you 4 would expect some payout to go to the interest 5 held by Pinnacle Monterey and some payout to go 6 to the interest that was held by AMS? 7 A. And I'm sorry, your -- the beginning 8 part of your question was what -- if what was 9 sold? 10 Q. Well, the entire Pinnacle affiliated 11 interest in the Monterey project was sold. 12 A. I would expect there to be a 13 distribution of proceeds consistent with the 14 ownership structure of that entity. Again, 15 considering whether or not in the position of 16 that entity with respect to its creditors, 17 obviously we have a real situation here with 18 this litigation, but putting that aside for a 19 second, just conceptually that's the way I would 20 think about it. 21 Q. And that's the way you think about the 22 Hunt Pinnacle transaction as well, right? 23 A. I don't really have a lot of thought 24 around the Hunt Pinnacle transaction other than</p>	<p style="text-align: right;">Page 344</p> <p>1 break? And I think we will wrap this up. 2 THE WITNESS: Okay. 3 THE VIDEOGRAPHER: We are off the record at 4 5:42 p.m. 5 (WHEREUPON, a short break was 6 taken.) 7 THE VIDEOGRAPHER: We are on the record at 8 5:47 p.m. 9 MR. DUTTON: Mr. Dudney, I don't have any 10 further questions for you at this time. 11 THE WITNESS: Okay. Thank you, Mr. Dutton. 12 THE VIDEOGRAPHER: This marks the end of DVD 13 No. 6 and the deposition of Mr. Dudney. We are 14 off the record at 5:48 p.m. 15 (FURTHER DEPONENT SAITH NAUGHT.) 16 17 18 19 20 21 22 23 24</p>

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<p style="text-align: right;">Page 345</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF WILL) 4 I, Shannon R. Roberts, a notary public within 5 and for the County of Will and State of 6 Illinois, do hereby certify that heretofore, 7 to-wit, on June 16, 2015, personally appeared 8 before me, at 77 West Wacker Drive, Suite 3100, 9 Chicago, Illinois, LOUIS DUDNEY, in a cause now 10 pending and undetermined in the United States 11 District Court, Northern District of California, 12 San Jose Division, wherein MONTEREY BAY MILITARY 13 HOUSING, LLC, et al. are the Plaintiffs, and 14 PINNACLE MONTEREY, LLC, et al. are the 15 Defendants. 16 I further certify that the said witness was 17 first duly sworn to testify the truth, the whole 18 truth and nothing but the truth in the cause 19 aforesaid; that the testimony then given by said 20 witness was reported stenographically by me in 21 the presence of the said witness, and afterwards 22 reduced to typewriting by Computer-Aided 23 Transcription, and the foregoing is a true and 24 correct transcript of the testimony so given by</p>	<p style="text-align: right;">Page 347</p> <p>1 DEPOSITION ERRATA SHEET 2 3 4 Our Assignment No. 104669 5 Case Caption: MONTEREY BAY 6 vs. PINNACLE 7 8 DECLARATION UNDER PENALTY OF PERJURY 9 I declare under penalty of perjury 10 that I have read the entire transcript of 11 my Deposition taken in the captioned matter 12 or the same has been read to me, and 13 the same is true and accurate, save and 14 except for changes and/or corrections, if 15 any, as indicated by me on the DEPOSITION 16 ERRATA SHEET hereof, with the understanding 17 that I offer these changes as if still under 18 oath. 19 Signed on the _____ day of 20 _____, 20____. 21 22 _____ 23 LOUIS DUDNEY 24</p>
<p style="text-align: right;">Page 346</p> <p>1 said witness as aforesaid. 2 I further certify that the signature to the 3 foregoing deposition was reserved by counsel for 4 the respective parties. 5 I further certify that the taking of this 6 deposition was pursuant to Notice, and that 7 there were present at the deposition the 8 attorneys hereinbefore mentioned. 9 I further certify that I am not counsel for 10 nor in any way related to the parties to this 11 suit, nor am I in any way interested in the 12 outcome thereof. 13 IN TESTIMONY WHEREOF: I have hereunto set my 14 hand and affixed my notarial seal this 18th day 15 of June, 2015. 16 17 18 19 20 21 _____ 22 NOTARY PUBLIC, WILL COUNTY, ILLINOIS 23 24</p>	<p style="text-align: right;">Page 348</p> <p>1 DEPOSITION ERRATA SHEET 2 Page No. _____ Line No. _____ Change to: _____ 3 _____ 4 Reason for change: _____ 5 Page No. _____ Line No. _____ Change to: _____ 6 _____ 7 Reason for change: _____ 8 Page No. _____ Line No. _____ Change to: _____ 9 _____ 10 Reason for change: _____ 11 Page No. _____ Line No. _____ Change to: _____ 12 _____ 13 Reason for change: _____ 14 Page No. _____ Line No. _____ Change to: _____ 15 _____ 16 Reason for change: _____ 17 Page No. _____ Line No. _____ Change to: _____ 18 _____ 19 Reason for change: _____ 20 Page No. _____ Line No. _____ Change to: _____ 21 _____ 22 Reason for change: _____ 23 SIGNATURE: _____ DATE: _____ 24 LOUIS DUDNEY</p>

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